

SCHEDULE V—continued.

(See section 98.)

WHEREAS information has been laid (or complaint has been made) before me of the commission (or suspected commission) of the offence of (mention the offence concisely), and it has been made to appear to me that the production of (specify the thing clearly) is essential to the enquiry now being made (or about to be made) into the said offence (or suspected offence);

This is to authorize and require you to search for the said *(the thing specified)* in the *(describe the house or place, or part thereof, to which the search is to be confined)*, and, if found, to produce the same forthwith before this Court: returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

(Seal.) \_\_\_\_\_ (Signature.)

(See section 99.)

WHEREAS information has been laid before me, and on due enquiry thereupon had I have been led to believe that the house (*describe the house or other place*) is used as a place for the deposit (*or sale*) of stolen property (*or, if for either of the other purposes expressed in the section, state the purpose in the words of the section*);

This is to authorize and require you to enter the said house (or other place) with such assistance as shall be required, and to use, if necessary, reasonable force for that purpose, and to search every part of the said house (or other place, or, if the search is to be confined to a part, specify the part clearly) and to seize and take possession of any property (or documents, or stamps, or seals, or coins, as the case may be)—[Add (when the case requires it) and also of any instruments and materials which you may reasonably believe to be kept for the manufacture of forged documents, or counterfeit stamps, or false seals, or counterfeit coin (as the case may be)] and forthwith to bring before this Court such of the said things as may be taken possession of, returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this                day of                , 18     .  
*(Seal.)*  
*(Signature)*

(See section 107.)

WHEREAS I, (name), inhabitant of (place), have been called upon to enter into a bond to keep the peace for the term of \_\_\_\_\_, I hereby bind myself not to commit a breach of the peace or do any act that may probably occasion a breach of the peace during the said term; and in case of my making default therein, I hereby bind myself to forfeit to Her Majesty the sum of rupees \_\_\_\_\_.

Dated this            day of            , 18            .  
 (Signature.)

(See sections 110 and 111.)

WHEREAS I, (name), inhabitant of (place), have been called upon to enter into a bond to be of good behaviour to Her Majesty the Empress and to all her subjects for the term of (state the period), I hereby bind myself to be of good behaviour to Her Majesty and to all her subjects during the said term; and in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of rupees.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_  
(Seal.)

(Signature.)

## SCHEDULE V—continued.

FORMS.

## XII.—SUMMONS ON INFORMATION OF A PROBABLE BREACH OF THE PEACE.

(See section 115.)

To \_\_\_\_\_ of \_\_\_\_\_  
 WHEREAS it has been made to appear to me by credible information that (*state the substance of the information*) and that you are likely to commit a breach of the peace (*or by which act a breach of the peace will probably be occasioned*), you are hereby required to attend in person (*or by a duly authorized agent*) at the Magistrate's Office at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, at ten o'clock in the forenoon, to shew cause why you should not be required to enter into a bond for rupees \_\_\_\_\_ (*when sureties are required, add*) and also to give security by the bond of one (*or two as the case may be*) sureties in the sum of rupees \_\_\_\_\_ (*each, if more than one*), that you will keep the peace for the term of \_\_\_\_\_  
 Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.  
 (Seal.) \_\_\_\_\_ (Signature.)

## XIII.—WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY TO KEEP THE PEACE.

(See section 124.)

To (*name and designation of Police-officer*) and to the Superintendent (*or Keeper*) of the Civil Jail at \_\_\_\_\_

WHEREAS (*name and place*) appeared before me in person (*or by his authorized agent*) on the \_\_\_\_\_ day of \_\_\_\_\_ in obedience to a summons calling upon him to shew cause why he should not enter into a bond for rupees \_\_\_\_\_ with one surety (*or a bond with two sureties each in rupees* \_\_\_\_\_), that he the said (*name*) would keep the peace for the period of \_\_\_\_\_ months; and whereas an order was then made requiring the said (*name*) to enter into and find such security (*state the security ordered when it differs from that mentioned in the summons*), and he has failed to comply with the said order;

This is to authorize and require you the said (*name of Police Constable*) to take and deliver, or cause to be taken and delivered, the said (*name*) to the Superintendent (*or Keeper*) of the said Civil Jail, and you the said Superintendent (*or Keeper*) to receive the said (*name*) into your custody together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*) unless he shall in the meantime comply with the said order by himself and his sureties entering into the said bond, in which case the same shall be received, and the said (*name*) released; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.  
 (Seal.) \_\_\_\_\_ (Signature.)

## XIV.—WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY FOR GOOD BEHAVIOUR.

(See section 124.)

To (*name and designation of Police-officer*) and to the Superintendent (*or Keeper*) of the Civil Jail at \_\_\_\_\_

WHEREAS it has been made to appear to me that (*name and description*) has been and is lurking within the District of \_\_\_\_\_ having no ostensible means of subsistence (*or, and that he is unable to give any satisfactory account of himself*);

or  
 WHEREAS evidence of the general character of (*name and description*) has been adduced before me and recorded from which it appears that he is by repute a robber (*or house-breaker, &c., as the case may be*);

or  
 WHEREAS evidence of the general character of (*name and description*) has been adduced before me and recorded from which it appears that he is by habit a robber (*or house-breaker, &c., as the case may be*);

And whereas an order has been recorded stating the same and requiring the said (*name*) to furnish security for his good behaviour for the term of (*state the period*) by entering into a bond with one surety (*or two or more sureties as the case may be*), himself for rupees \_\_\_\_\_, and the said (*name*) has failed to comply with the said order, and for such default has been adjudged imprisonment for (*state the term*) unless the said security be sooner furnished;



SCHEDULE V—continued.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

(Seal.) (Signature.)

(See section 125.)

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

(Seal.) (Signature.)

(See section 134.)

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

(Seal.) (Signature.)

SCHEDULE V—*continued.*

FORMS.

## XVII.—MAGISTRATE'S ORDER CONSTITUTING A JURY.

(See section 139.)

WHEREAS on the            day of           , 18           , an order was issued to (name) requiring him (state the effect of the order) ; and whereas the said (name) has applied to me by a petition bearing date the            day of            for an order appointing a Jury to try whether the said recited order is reasonable and proper; I do hereby appoint (the names, &c., of the five or more Jurors) to be the Jury to try and decide the said question, and do require the said Jury to report their decision within            days from the date of this order at my office at           .

Given under my hand and the seal of the Court, this    day of           , 18           .

(Seal.)

(Signature.)

## XVIII.—MAGISTRATE'S NOTICE AND PEREMPTORY ORDER AFTER THE FINDING BY A JURY.

(See section 141.)

To (name, description and residence).

I HEREBY give you notice that the Jury duly appointed on the petition presented by you on the            day of            have found that the order issued on the            day of            requiring you (state substantially the requisition in the order) is reasonable and proper, and I hereby direct and require you to obey the said order within (state the time allowed) on peril of the penalty provided by the Indian Penal Code for disobedience thereto.

Given under my hand and the seal of the Court, this            day of           , 18           .

(Seal.)

(Signature.)

## XIX.—INJUNCTION TO PROVIDE AGAINST IMMINENT DANGER PENDING ENQUIRY BY JURY.

(See section 143.)

To (name, description and residence).

WHEREAS the enquiry by a Jury appointed to try whether my order issued on the            day of           , 18           , is reasonable and proper is still pending, and it has been made to appear to me that the nuisance mentioned in the said order is attended with so imminent serious danger to the public as to render necessary immediate measures to prevent such danger, I do hereby, under the provisions of section            of the Code of Criminal Procedure, direct and enjoin you forthwith to (state plainly what is required to be done as a temporary safeguard), pending the result of the local enquiry by the Jury.

Given under my hand and the seal of the Court, this            day of           , 18           .

(Seal.)

(Signature.)

## XX.—MAGISTRATE'S ORDER PROHIBITING THE REPETITION, &amp;C., OF A NUISANCE.

(See section 144.)

To (name, description and place of residence).

WHEREAS it has been made to appear to me that, &c. (state the proper recital, guided by Form No. XXI) ;

I do hereby strictly order and enjoin you not to repeat the said nuisance by again placing or causing or permitting to be placed, &c. (as the case may be).

Given under my hand and the seal of the Court, this            day of           , 18           .

(Seal.)

(Signature.)

## XXI.—MAGISTRATE'S ORDER TO PREVENT OBSTRUCTION, RIOT, &amp;C.

(See section 145.)

To (name, description and place of residence).

WHEREAS it has been made to appear to me that you are in possession (or have the management) of (describe clearly the property), and that, in digging a drain on the said land, you are about to throw or place a portion of the earth and stones dug up upon the adjoining public road, so as to occasion risk of obstruction to persons using the road ;

or

WHEREAS it has been made to appear to me that you and a number of other persons (mention the class of persons) are about to meet and proceed in a religious procession along the pub-



## FORMS.

SCHEDULE V—*continued.*

lic street, &c. (*as the case may be*), and that such procession is likely to lead to a riot or an affray ;

or

WHEREAS, &c., &c. (*as the case may be*) ;

I do hereby order you not to place or permit to be placed any of the earth or stone dug from your land in any part of the said road ;

or

I do hereby prohibit the procession passing along the said street, and strictly warn and enjoin you not to take any part in such procession (*or as the case recited may require*).

Given under my hand and the seal of the Court, this                      day of                      , 18                      .

(Seal.)

(Signature.)

XXII.—MAGISTRATE'S ORDER DECLARING PARTY ENTITLED TO RETAIN POSSESSION OF LAND, &c., IN DISPUTE.

(See section 146.)

It appearing to me, on the grounds duly recorded, that a dispute, likely to induce a breach of the peace, existed between (*describe the parties by name and residence, or residence only, if the dispute be between bodies of villagers*) concerning certain (*state concisely the subject of dispute*) situate within the local limits of my jurisdiction, all the said parties were called upon to give in a written statement of their respective claims as to the fact of actual possession of the said (*the subject of dispute*), and being satisfied by due enquiry had thereupon, without reference to the merits of the claim of either of the said parties to the legal right of possession, that the claim of actual possession by the said (*name or names or description*) is true,

I do decide and declare that he is (*or they are*) in possession of the said (*the subject of dispute*) and entitled to retain such possession until ousted by due course of law, and do strictly forbid any disturbance of his (*or their*) possession in the meantime.

Given under my hand and the seal of the Court, this                      day of                      , 18                      .

(Seal.)

(Signature.)

XXIII.—WARRANT OF ATTACHMENT IN THE CASE OF A DISPUTE AS TO THE POSSESSION OF LAND, &c.

(See section 147.)

To the Police-officer in charge of the Police-station at                      [*or, to the Collector of*                      ] .

WHEREAS it has been made to appear to me that a dispute likely to induce a breach of the peace existed between (*describe the parties concerned by name and residence, or residence only, if the dispute be between bodies of villagers*) concerning certain (*state concisely the subject of dispute*) situate within the limits of my jurisdiction, and the said parties were thereupon duly called upon to state in writing their respective claims as to the fact of actual possession of the said (*the subject of dispute*), and whereas, upon due enquiry in the said claims, I have decided that neither of the said parties was in possession of the said (*the subject of dispute*) [*or I am unable to satisfy myself as to which of the said parties was in possession as aforesaid*] ;

This is to authorize and require you to attach the said (*the subject of dispute*) by taking and keeping possession thereof, and to hold the same under attachment until the decree or order of a competent Court determining the rights of the parties, or the claim to possession, shall have been obtained ; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this                      day of                      , 18                      .

(Seal.)

(Signature.)

XXIV.—MAGISTRATE'S ORDER PROHIBITING THE DOING OF ANY THING ON LAND OR WATER.

(See section 148.)

A DISPUTE having arisen concerning the right of use of (*state concisely the subject of dispute*) situate within the limits of my jurisdiction, the possession of which land (*or water*) is claimed exclusively by (*describe the person or persons*), and it appearing to me, on due enquiry into the same, that the said land (*or water*) has been open to the enjoyment of such use by the public (*or if by an individual or class of persons, describe him or them*), and (*if the use can be enjoyed throughout the year*) that the said use has been ordinarily enjoyed within three months of the

## FORMS.

I do order that the said (the claimant or claimants of possession), or any one in their interest, shall not take (or retain) possession of the said land (or water) to the exclusion of the enjoyment of the right of use aforesaid, until he (or they) shall obtain the decree or order of a competent Court adjudging him (or them) to be entitled to exclusive possession.

(Seal.)

(Signature.)

(See section 170.)

and after enquiry called upon to enter into my own recognizance to appear when required,  
do hereby bind myself to appear at \_\_\_\_\_, in the Court of \_\_\_\_\_, on  
the \_\_\_\_\_ day of \_\_\_\_\_ next (or on such day as I may hereafter be required to attend)  
to answer further to the said charge, and, in case of my making default herein, I bind myself  
to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

(Signature.)

Dated this                      day of                      , 18

(Signature.)

(See section 171.)

Dated this            day of            , 18

(Signature.)

(See section 219.)

The charge against the accused is that, &c. (*state the offence as in the charge*).  
Dated this            day of            18

(Signature.)

(See sections 222, 223, 224.)

(a) I, [name and office of Magistrate, &c.], hereby charge you [name of accused person] as follows:—

On Penal Code, section 121.



## FORMS.

## SCHEDULE V—continued.

Penal Code, and within the cognizance of the Court of Session [*when the charge is framed by a Presidency Magistrate, for Court of Session substitute High Court*].

(c) And I hereby direct that you be tried by the said Court on the said charge.

[*Signature and seal of the Magistrate.*]

[*To be substituted for (b) :—*]

(2) That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, with the intention of inducing the Honourable A. B., Member of the Council of the Governor General of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and thereby committed an offence punishable under section 124 of the Indian Penal Code, and within the cognizance of the Court of Session [*or High Court*].

(3) That you, being a public servant in the \_\_\_\_\_ Department, directly accepted from [*state the name*], for another party [*state the name*], a gratification, other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under section 161 of the Indian Penal Code, and within the cognizance of the Court of Session [*or High Court*].

(4) That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, committed culpable homicide not amounting to murder, causing the death of \_\_\_\_\_, and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [*or High Court*].

(5) That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, abetted the commission of suicide by A. B., a person in a state of intoxication, and thereby committed an offence punishable under section 306 of the Indian Penal Code, and within the cognizance of the Court of Session [*or High Court*].

(6) That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, voluntarily caused grievous hurt to \_\_\_\_\_, and thereby committed an offence punishable under section 325 of the Indian Penal Code, and within the cognizance of the Court of Session [*or High Court*].

(7) That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, robbed [*state the name*] and thereby committed an offence punishable under section 392 of the Indian Penal Code, and within the cognizance of the Court of Session [*or High Court*].

(8) That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, committed dacoity, an offence punishable under section 395 of the Indian Penal Code, and within the cognizance of the Court of Session [*or High Court*].

(9) That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, did [*or omitted to do, as the case may be*] such conduct being contrary to the provisions of Act \_\_\_\_\_, section \_\_\_\_\_, and was known by you to be prejudicial to \_\_\_\_\_, and thereby committed an offence punishable under section 166 of the Indian Penal Code, and within the cognizance of the Court of Session [*or High Court*].

(10) That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, in the \_\_\_\_\_ course of the trial of \_\_\_\_\_, before \_\_\_\_\_, stated in evidence that “ \_\_\_\_\_,” which statement you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [*or High Court*].

[*In cases tried by Magistrates, substitute “within my cognizance” for “within the cognizance of the Court of Session,” and in (c) omit “by the said Court.”*]

## (II).—CHARGES WITH TWO OR MORE HEADS.

(a) I, [*name and office of Magistrate, &c.*], hereby charge you [*name of accused person*] as follows :—

(b) *First.*—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, knowing a coin to be counterfeit, delivered the same to another person, by name A. B., as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [*or High Court*].

*Secondly.*—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, knowing a coin to be counterfeit, attempted to induce another person, by name A. B., to receive it as

## SCHEDULE V—continued.

FORMS.

genuine, and thereby committed an offence punishable under section 242 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(c) And I hereby direct that you be tried by the said Court on the said charge.

[To be substituted for (b) :—]

[Signature and seal of the Magistrate.]

First.—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, committed murder by causing the death of \_\_\_\_\_, and thereby committed an offence punishable under section 302 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

Secondly.—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, by causing the death of \_\_\_\_\_, committed culpable homicide, and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

For (b) First.—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

Secondly.—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, committed theft, having made preparation for causing death to a person in order to the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

Thirdly.—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, committed theft, having made preparation for causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

Fourthly.—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

For (b) That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, in the course of the enquiry into \_\_\_\_\_ before \_\_\_\_\_, stated in evidence that “\_\_\_\_\_,” and that you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, in the course of the trial of \_\_\_\_\_, before \_\_\_\_\_, stated in evidence that “\_\_\_\_\_,” one of which statements you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

In trials before Magistrates, substitute “within my cognizance” for “within the cognizance of the Court of Session,” and omit “by the said Court.”

# XXIX.—WARRANT OF COMMITMENT ON A SENTENCE OF IMPRISONMENT OR FINE IF PASSED BY A MAGISTRATE.

(See sections 246 and 259.)

To (name and designation of Police Constable) and to the Superintendent (or Keeper) of the Jail at \_\_\_\_\_

WHEREAS on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, (name of prisoner), the (1st, 2nd, 3rd, as the case may be) prisoner in case No. \_\_\_\_\_ of the Calendar for 18\_\_\_\_, was convicted before me (name and official designation) of the offence of (mention the offence or offences concisely) under section (or sections) of the Penal Code (or of Act \_\_\_\_\_), and was sentenced to (state the punishment fully and distinctly);

This is to authorize and require you the said (name of Police Constable) to take and deliver, or cause to be taken and delivered, the said (name of offender) to the Superintendent (or Keeper) of the said jail, and you the said Superintendent (or Keeper) to receive the said (prisoner's name) into your custody in the said jail, together with this warrant, and there carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

(Seal.)

(Signature.)



## FORMS.

SCHEDULE V—*continued.*

## XXX.—WARRANT OF IMPRISONMENT ON FAILURE TO RECOVER AMENDS BY DISTRESS.

(See section 251.)

To (name and designation of Police Constable) and to the Superintendent (or Keeper) of the Civil Jail at

WHEREAS (name and description) has brought against (name and description of the accused person) the complaint that (mention it concisely), and the same has been dismissed as frivolous and vexatious, and the order of dismissal awards payment by the said (name of complainant) of the sum of rupees as amends; and whereas the said sum has not been paid and cannot be recovered by distress of the moveable property of the said (name of complainant) and an order has been made for his imprisonment in jail for the period of days, unless the aforesaid sum be sooner paid;

This is to authorize and require you the said (name of Police Constable) to take and deliver, or cause to be taken and delivered, the said (name) to the Superintendent (or Keeper) of the said Civil Jail, and you the said Superintendent (or Keeper) to receive the said (name) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (term of imprisonment), subject to the provisions of section 69 of the Indian Penal Code, unless the said sum be sooner paid, and on the receipt thereof forthwith to set him at liberty: returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(Seal.)

(Signature.)

## XXXI.—SUMMONS TO A WITNESS.

(See sections 68 and 253.)

To of

WHEREAS complaint has been made before me that of has (or is suspected to have) committed the offence of (state the offence concisely with time and place) and it appears to me that you are likely to give material evidence for the prosecution;

You are hereby summoned to appear before this Court on the day of next at ten o'clock in the forenoon, to testify what you know concerning the matter of the said complaint, and not to depart thence without leave of the Court; and you are hereby warned that if you shall without just excuse neglect or refuse to appear on the said date, a warrant will be issued to compel your attendance.

Given under my hand and the seal of the Court, this day of , 18 .

(Seal.)

(Signature.)

## XXXII.—WARRANT OF COMMITMENT ON A SENTENCE OF IMPRISONMENT OR FINE IF PASSED BY A MAGISTRATE.

(See section 259.)

To (name and designation of Police Constable) and to the Superintendent (or Keeper) of the Jail at

WHEREAS on the day of , 18 , (name of prisoner), the (1st, 2nd, 3rd, as the case may be) prisoner in case No. of the Calendar for 18 , was convicted before me (name and official designation) of the offence of (mention the offence or offences concisely) under section (or sections) of the Indian Penal Code (or of Act ), and was sentenced to (state the punishment fully and distinctly);

This is to authorize and require you the said (name of Police Constable) to take and deliver, or cause to be taken and delivered, the said (name of offender) to the Superintendent (or Keeper) of the said jail, and you the said Superintendent (or Keeper) to receive the said (prisoner's name) into your custody in the said jail, together with this warrant, and there carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the Court, this day of , 18 .

(Seal.)

(Signature.)

## SCHEDULE V—continued.

FORMS.

## XXXIII.—PRECEPT TO DISTRICT MAGISTRATE TO SUMMON JURORS AND ASSESSORS.

(See section 326.)

To the District Magistrate of

WHEREAS a Criminal Session is appointed to be held in the Court-house at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ next, and the names of the persons herein stated have been duly drawn by lot from among those named of the revised list of jurors and assessors furnished to this Court, you are hereby required to summon the said persons to attend at the said Court of Session at 10 A. M. on the said date, and, within such date, to certify that you have done so in pursuance of this precept.

(Here enter the names of Jurors and Assessors.)

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18

(Seal.)

(Signature.)

## XXXIV.—SUMMONS TO JUROR OR ASSESSOR.

(See section 328.)

To (name) of (place).

PURSUANT to a precept directed to me by the Court of Session of \_\_\_\_\_ requiring your attendance as an Assessor (or Juror) at the next Criminal Session, you are hereby summoned to attend at the said Court of Session at ten o'clock in the forenoon on the \_\_\_\_\_ day of \_\_\_\_\_ next.

Given under my hand and seal of office, this \_\_\_\_\_ day of \_\_\_\_\_, 18

(Seal.)

(Signature.)

## XXXV.—WARRANT OF COMMITMENT UNDER SENTENCE OF DEATH.

(See section 374.)

To the Superintendent (or Keeper) of the Jail at

WHEREAS at the Sessions held before me on the \_\_\_\_\_ day of \_\_\_\_\_, 18, (name of prisoner), the (1st, 2nd, 3rd, as the case may be) prisoner in case No. \_\_\_\_\_ of the Calendar at the said Session, was duly convicted of the offence of culpable homicide amounting to murder under section \_\_\_\_\_ of the Indian Penal Code, and sentenced to suffer death, subject to the confirmation of the said sentence by the \_\_\_\_\_ Court of \_\_\_\_\_

This is to authorize and require you, the said Superintendent (or Keeper), to receive the said (prisoner's name) into your custody in the said Jail, together with this warrant, and him there safely keep until you shall receive the further warrant or order of this Court, carrying into effect the order of the said \_\_\_\_\_ Court.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18

(Seal.)

(Signature.)

## XXXVI.—WARRANT OF EXECUTION ON A SENTENCE OF DEATH.

(See section 381.)

To the Superintendent (or Keeper) of the Jail at

WHEREAS (name of prisoner), the (1st, 2nd, 3rd, as the case may be) prisoner in case No. \_\_\_\_\_ of the Calendar at the Sessions held before me on the \_\_\_\_\_ day of \_\_\_\_\_, 18, has been by a warrant of this Court, dated the \_\_\_\_\_ day of \_\_\_\_\_, committed to your custody under sentence of death, and whereas the order of the \_\_\_\_\_ Court of \_\_\_\_\_ confirming the said sentence has been received by this Court;

This is to authorize and require you the said Superintendent (or Keeper) to carry the said sentence into execution by causing the said \_\_\_\_\_ to be hanged by the neck until be dead, at (time and place of execution), and to return this warrant to the Court with an endorsement certifying that the sentence has been executed.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18

(Seal.)

(Signature.)



## FORMS.

## SCHEDULE V—continued.

## XXXVII.—WARRANT AFTER A COMMUTATION OF A SENTENCE.

(See sections 381, 382.)

To the Superintendent (or Keeper) of the Jail at

WHEREAS at a Session held on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, (name of prisoner), the (1st, 2nd, or 3rd, as the case may be) prisoner in case No. \_\_\_\_\_ of the Calendar at the said Sessions, was convicted of the offence of \_\_\_\_\_, punishable under section \_\_\_\_\_ of the Indian Penal Code, and sentenced to \_\_\_\_\_, and was thereupon committed to your custody; and whereas by the order of the \_\_\_\_\_ Court of \_\_\_\_\_ Court (a duplicate of which is herewith annexed) the punishment adjudged by the said sentence has been commuted to the punishment of transportation for life (or, as the case may be);

This is to authorize and to require you, the said Superintendent (or Keeper), safely to keep the said (prisoner's name) in your custody in the said Jail, as by law is required, until he shall be delivered over by you to the proper authority and custody for the purpose of his undergoing the punishment of transportation under the said order,

or  
if the mitigated sentence is one of imprisonment, say, after the words "custody in the said Jail," "and there to carry into execution the punishment of imprisonment under the said order according to law."

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.  
(Seal.) (Signature.)

## XXXVIII.—WARRANT TO LEVY A FINE BY DISTRESS AND SALE.

(See section 386.)

To (name and designation of the Police-officer or other person, or persons, to execute the warrant).

WHEREAS (name and description of the offender) was on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, convicted before me of the offence of (mention the offence concisely) and sentenced to pay a fine of rupees \_\_\_\_\_, and whereas the said (name), although required to pay the said fine, hath not paid the same or any part thereof;

This is to authorize and require you to make distress by seizure of any moveable property belonging to the said (name) which may be found within the District of \_\_\_\_\_; and, if within (state the number of days or hours allowed) next after such distress the said sum shall not be paid (or forthwith), to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said fine; returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.  
(Seal.) (Signature.)

## XXXIX.—WARRANT OF COMMITMENT IN CERTAIN CASES OF CONTEMPT WHEN A FINE IS IMPOSED.

(See section 480.)

To (name and designation of Police Constable) at the Police-station of \_\_\_\_\_, and to (name) the Superintendent (or Keeper) of the Civil Jail at \_\_\_\_\_

WHEREAS at a Court holden before me on this day (name and description of the offender) the presence (or view) of the Court committed wilful contempt;

And whereas for such contempt the said (name of offender) has been adjudged by the Court to pay a fine of rupees \_\_\_\_\_, or in default to suffer imprisonment for the space of (state the number of months or days);

This is to authorize and require you, the said (name of Police Constable), to take and deliver, or cause to be taken and delivered, the said (name of offender) to the Superintendent (or Keeper) of the said Civil Jail, and you, the said Superintendent (or Keeper) of the said Civil Jail, to receive the said (name of offender) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (term of imprisonment) unless the said fine be sooner paid; and on the receipt thereof, forthwith to set him at liberty, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.  
(Seal.) (Signature.)

## SCHEDULE V—continued.

FORMS.

## XL.—MAGISTRATE'S WARRANT OF COMMITMENT FOR REFUSING TO ANSWER WHERE THERE IS NO FINE.

(See section 485.)

To (name and designation of Police Constable) at the Police-station of

WHEREAS (name and description), being summoned (or brought before this Court) as a witness and this day required to give evidence on an enquiry into an alleged offence, refused to answer a certain question (or questions) put to him touching the said alleged offence, and duly recorded, without alleging any just excuse for such refusal, and for his contempt has been adjudged detention in custody for (term of detention adjudged);

This is to authorize and require you to take the said (name) into custody, and him safely keep in the Lock up of the said station for the space of \_\_\_\_\_ days unless in the meantime he shall consent to be examined and to answer the questions asked of him, and on the last of the said days, or forthwith on such consent being known, to bring him before this Court to be dealt with according to law; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

(Seal.)

(Signature.)

## XLI.—SESSIONS JUDGE'S WARRANT OF COMMITMENT FOR REFUSING TO ANSWER.

(See section 485.)

To (name and designation of the Police Constable at the Police-station of \_\_\_\_\_).

WHEREAS (name and description) being a witness in case No. \_\_\_\_\_ of the calendar of cases for trial at the Court of Session holden before me on this day, and being required by the Court to answer a certain question (or questions) put to him on the hearing of the said case, and duly recorded has refused to answer the said question (or questions) without alleging any just excuse for such refusal, and for his contempt has been adjudged detention in custody, for (term of detention adjudged); This is to authorize and require you to take the said (name) into custody, and him safely to keep in the lock-up of the said station for the space of \_\_\_\_\_ days, unless in the meantime he shall consent to be examined, and to answer the question (or questions) asked of him, and on the last of the said days, or forthwith on such consent being known, to bring him before this Court to be dealt with according to law; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

(Seal.)

(Signature.)

## XLII.—WARRANT OF IMPRISONMENT ON FAILURE TO PAY MAINTENANCE.

(See section 488.)

To (name and designation of Police Constable) and to the Superintendent (or Keeper) of the Jail at \_\_\_\_\_.

WHEREAS (name, description and address) has been proved before me to be possessed of sufficient means to maintain his wife (name) [or his child (name)], who is by reason of (state the reason) unable to maintain (herself or himself) and to have neglected (or refused) to do so, and an order has been duly made requiring the said (name) to allow to his said wife (or child) for maintenance the monthly sum of rupees \_\_\_\_\_, and whereas it has been further proved that the said (name) in wilful disregard of the said order has failed to pay rupees \_\_\_\_\_, being the amount of the allowance for the month (or months) of \_\_\_\_\_: And thereupon an order was made adjudging him to undergo simple (or rigorous) imprisonment in the said jail for the period of \_\_\_\_\_;

This is to authorize and require you the said (name of Police-officer) to take and deliver, or cause to be taken and delivered, the said (name) to the Superintendent (or Keeper) of the said Jail, and you the said Superintendent (or Keeper) to receive the said (name) into your custody in the said jail, together with this warrant, and there carry the said order into execution according to law; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

(Seal.)

(Signature.)

5x 1



## FORMS.

SCHEDULE V—*continued*.

## XLIII.—WARRANT TO ENFORCE THE PAYMENT OF MAINTENANCE BY DISTRESS AND SALE.

(See section 488.)

To (*name and designation of the Police-officer or other person to execute the warrant*).

WHEREAS (*name, description and address*) has been proved before me to be possessed of sufficient means to maintain his wife (*name*) [or his child (*name*)], who is by reason of (*state the reason*) unable to maintain (*herself or himself*), and to have neglected (*or refused*) to do so, and an order has been duly made requiring the said (*name*) to allow to his said wife (*or child*) for maintenance the monthly sum of rupees , and whereas it has been further proved that the said (*name*) in wilful disregard of the said order has failed to pay rupees , being the amount of the allowance for the month (*or months*) of ;

This is to authorize and require you to make distress by seizure of any moveable property belonging to the said (*name*) which may be found within the district of , and if within (*state the number of days or hours allowed*) next after such distress the said sum shall not be paid (*or forthwith*), to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said sum; returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this                      day of                      , 18 .

(Seal.)

(Signature.)

## XLIV.—WARRANT OF COMMITMENT UNDER SECTION 491.

To the (*here insert the officer's designation*).

WHEREAS the Governor General (*or the Governor of Fort St. George, or the Governor of Bombay, as the case may be*) in Council, for good and sufficient reasons, has seen fit to determine that (*here insert the State-prisoner's name*) shall be placed under personal restraint at (*here insert the name of the place*), you are hereby required, in pursuance of that determination, to receive the person above-named into your custody, and to deal with him in conformity to the orders of the Governor General (*or the Governor*) in Council, and the provisions of the Code of Criminal Procedure, Chapter XXXVII.

Fort William (*or as the case may be*), theBy order of the Governor General (*or the Governor*) in Council,

A. B.,

Secretary (*or Chief Secretary*) to Government.

## XLV.—BOND AND BAIL-BOND ON A PRELIMINARY ENQUIRY BEFORE A MAGISTRATE.

(See sections 506, 509.)

I, (*name*), of (*place*), being brought before the Magistrate of (*as the case may be*) charged with the offence of , and required to give security for my attendance in his Court and at the Sessions Court, if required, do bind myself to attend at the Court of the said Magistrate on every day of the preliminary enquiry into the said charge, and should the case be sent for trial by the Sessions Court to be, and appear, before the said Court when called upon to answer the charge against me, and in case of my making default herein, I bind myself to forfeit to Her Majesty the sum of rupees .

Dated this                      day of                      , 18 .

(Signature.)

I hereby declare myself (*or we jointly or severally declare ourselves and each of us*) surety for the said (*name*) that he shall attend at the Court of                      on every day of the preliminary enquiry into the offence charged against him, and should the case be sent for trial by the Sessions Court, that he shall be and appear before the said Court to answer the charge against him, and in case of his making default therein, I bind myself to forfeit to Her Majesty the sum of rupees .

Dated this                      day of                      , 18 .

(Signature.)

## SCHEDULE V—continued.

FORMS.

## XLVI.—WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY.

(See section 510.)

To the Superintendent (or Keeper) of the Jail at  
officer in whose custody the person is).

(or other

WHEREAS (name and description of prisoner) was committed to your custody under warrant of this Court, dated the                      day of                      , and has since with his surety (or sureties) duly executed a bond,

or

and sufficient cause has been shewn to me for his release from further imprisonment,

or

and there have appeared to me sufficient grounds for the opinion that he can be released without any hazard to the community;

This is to authorize and require you forthwith to discharge the said (name) from your custody.

Given under my hand and the seal of the Court, this                      day of                      , 18                      .

(Signature.)

## XLVII.—WARRANT OF ATTACHMENT TO ENFORCE A BOND.

(See section 525.)

To the Police-officer in charge of the Police-station at                      .

WHEREAS (name, description and address of person) has failed to appear on (mention the occasion) pursuant to his recognizance, and has by such default forfeited to Her Majesty the Empress the sum of rupees (the penalty in the bond);

This is to authorize and require you to attach any moveable property of the said (name) that you may find within the district of                      , by seizure and detention, and if the said amount be not paid within three days to sell the property so attached or so much of it as may be sufficient to realize the amount aforesaid, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this                      day of                      , 18                      .

(Seal.)

(Signature.)

## XLVIII.—NOTICE TO SURETY ON BREACH OF A BOND.

(See Section 525.)

To                      of                      .

WHEREAS on the                      day of                      , 18                      , you became surety for (name) of (place) that he should appear before this Court on the                      day of                      , and bound yourself in default thereof to forfeit the sum of rupees                      to Her Majesty the Empress; and whereas the said (name) has failed to appear before this Court, and by reason of such default you have forfeited the aforesaid sum of rupees                      , you are hereby required to pay the said penalty or shew cause, within                      days from this date, why payment of the said sum should not be enforced against you.

Given under my hand and the seal of the Court, this                      day of                      , 18                      .

(Seal.)

(Signature.)

## XLIX.—NOTICE TO SURETY OF FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

(See Section 525.)

To                      of                      .

WHEREAS on the                      day of                      , 18                      , you became surety by a bond for (name) of (place) that he would keep the peace for the period of                      , and bound yourself in default thereof to forfeit the sum of rupees                      to Her Majesty the Empress; and whereas the said (name) has been convicted of the offence of (mention the offence concisely) committed since you became such surety, whereby your security-bond has become forfeited;



## FORMS.

SCHEDULE V—*continued.*

You are hereby required to pay the said penalty of rupees \_\_\_\_\_, or to shew cause within \_\_\_\_\_ days, why it should not be paid.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.  
(Seal.) \_\_\_\_\_ (Signature.)

## L.—WARRANT OF ATTACHMENT AGAINST A SURETY.

(See Section 525.)

To \_\_\_\_\_

WHEREAS (*name, description and address*) has bound himself as surety for the appearance of (*mention the condition of the bond*), and the said (*name*) has made default, and thereby forfeited to Her Majesty the Empress the sum of rupees \_\_\_\_\_ (*the penalty in the bond*);

This is to authorize and require you to attach any moveable property of the said (*name*) which you may find within the district of \_\_\_\_\_, by seizure and detention. If the said amount be not paid within three days, to sell property so attached, or so much of it as may be sufficient to realize the amount aforesaid, and make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.  
(Seal.) \_\_\_\_\_ (Signature.)

## LI.—WARRANT OF COMMITMENT OF THE SURETY OF AN ACCUSED PERSON ADMITTED TO BAIL.

(See Section 525.)

To (*name and designation of Police-officer*) and the Superintendent (*or Keeper*) of the Civil Jail at \_\_\_\_\_

WHEREAS (*name and description of surety*) has bound himself as a surety for the appearance of \_\_\_\_\_ (*state the condition of the bond*), and \_\_\_\_\_ the said (*name*) has therein made default whereby the penalty mentioned in the said bond has been forfeited to Her Majesty the Empress; and whereas the said (*name of surety*) has, on due notice to him, failed to pay the said sum or shew any sufficient cause why it should not be enforced against him, and the same cannot be recovered by attachment and sale of moveable property of his, and an order has been made for his confinement in Jail for (*specify the period*);

This is to authorize and require you the said (*name of Police-officer*) to take and deliver, or cause to be taken and delivered, the said (*name*) to the Superintendent (*or Keeper*) of the said Civil Jail, and you the said Superintendent (*or Keeper*) to receive the said (*name*) into your custody with this warrant and him safely to keep in the said Jail for the said (*term of imprisonment*), and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.  
(Seal.) \_\_\_\_\_ (Signature.)

## LII.—NOTICE OF FORFEITURE OF A BOND TO KEEP THE PEACE TO THE PRINCIPAL.

(See Section 525.)

To (*name, description and address*).

WHEREAS on the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_, you entered into a bond not to commit, &c. (*as in the bond*), and proof of the forfeiture of the same has been given before me and duly recorded;

You are hereby called upon to pay the said penalty of rupees \_\_\_\_\_, or to shew cause before me within \_\_\_\_\_ days why payment of the same should not be enforced against you.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.  
(Seal.) \_\_\_\_\_ (Signature.)

## LIII.—WARRANT TO ATTACH THE PROPERTY OF THE PRINCIPAL ON BREACH OF A BOND TO KEEP THE PEACE.

(See Section 525.)

To (*name and designation of Police-officer*) at the Police-station of \_\_\_\_\_

WHEREAS (*name and description*) did on the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_, enter into a bond for the sum of rupees \_\_\_\_\_, binding himself not to commit a breach of the

SCHEDULE V—*continued.*

FORMS.

peace, &c. (as in the bond), and proof of the forfeiture of the said bond has been given before me and duly recorded; and whereas notice has been given to the said (name) calling upon him to shew cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

This is to authorize and require you to attach by seizure moveable property belonging to the said (name) to the value of rupees \_\_\_\_\_ which you may find within the district of \_\_\_\_\_, and if the said sum be not paid within \_\_\_\_\_ to sell the property so attached, or so much of it as may be sufficient to realize the same; and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.  
(Seal.) (Signature.)

## LIV.—WARRANT OF IMPRISONMENT ON BREACH OF A BOND TO KEEP THE PEACE.

(See Section 525.)

To (name and designation of Police-officer) and to the Superintendent (or Keeper) of the Civil Jail at \_\_\_\_\_

WHEREAS proof has been given before me and duly recorded that (name and description) has committed a breach of the bond entered into by him to keep the peace, whereby he has forfeited to Her Majesty the Empress the sum of rupees \_\_\_\_\_; and whereas the said (name) has failed to pay the said sum or to shew cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said (name) in the Civil Jail for the period of (term of imprisonment);

This is to authorize and require you the said (name of Police-officer) to take and deliver, or cause to be taken and delivered, the said (name) to the Superintendent (or Keeper) of the said Civil Jail; and you the said Superintendent (or Keeper) to receive the said (name) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (term of imprisonment); and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.  
(Seal.) (Signature.)

## LV.—WARRANT OF ATTACHMENT AND SALE ON FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

(See Section 525.)

To the Police-officer in charge of the Police-station at \_\_\_\_\_

WHEREAS (name, description and residence) did on the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_, give security by bond in the sum of rupees \_\_\_\_\_ for the good behaviour of (name, &c., of the principal), and proof has been given before me and duly recorded of the commission by the said (name) of the offence of \_\_\_\_\_, whereby the said bond has been forfeited; and whereas notice has been given to the said (name) calling upon him to shew cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

This is to authorize you and require you to attach by seizure moveable property belonging to the said (name) to the value of rupees \_\_\_\_\_ which you may find within the District of \_\_\_\_\_, and if the said sum be not paid within \_\_\_\_\_ to sell the property so attached, or so much of it as may be sufficient to realize the same, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.  
(Seal.) (Signature.)

## LVI.—WARRANT OF IMPRISONMENT ON FORFEITURE OF A BOND FOR GOOD BEHAVIOUR.

(See Section 525.)

To (name and designation of Police-officer) and to the Superintendent (or Keeper) of the Civil Jail at \_\_\_\_\_

WHEREAS (name, description and residence) did on the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_, give security by bond in the sum of rupees \_\_\_\_\_ for the good behaviour of (name, &c., of the principal), and proof of the breach of the said bond has been given before me and duly recorded, whereby the said (name) has forfeited to Her Majesty the Empress the sum of rupees \_\_\_\_\_; and whereas he has failed to pay the said sum or to shew cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said (name) in the Civil Jail for the period of (term of imprisonment);

This is to authorize and require you the said (name of Police Constable) to take and deliver, or cause to be taken and delivered, the said (name) to the Superintendent (or Keeper) of the said Civil Jail, and you the said Superintendent (or Keeper) to receive the said (name) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (term of imprisonment); returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.  
(Seal.) (Signature.)



*Table shewing correspondence of the section-numbers of Act X of 1872, as amended by Act XI of 1874, with those of the Bill.*

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1, para. 1 ...	1, para. 1	4, para. 1, cl. 11	4, para. 1, cl. (i)
2 ...	2	12	(j)
3 ...	1	13	(q)
2, para. 1 ...	2, 1	14	.....
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3 ...	3, 1	16	(s)
4 ...	2	17	(n)
<sup>1</sup> 5, cl. 1	4, para. 1, cl. (s)	18	(u)
2	205, 1	19	(f)
3	4, 1, cl. (d)	20	(t)
4	28	<sup>2</sup> 4, para. 2, cl. 1	4, para. 2, cl. 1
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7 ...	2, para. 2	6 ...	5
8 ...	568, 1	7 ...	5
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cl. 1	.....	2 ...	29, cl. (b) and (c)
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3	4, para. 1, cl. (b)	10 ...	2, para. 2
4	(e)	11 ...	5
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6	.....	13 ...	2
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8	(e)	15, para. 1 ...	9, para. 1
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<sup>1</sup> See Act XI 1874, s. 1.

<sup>2</sup> See Act XI, 1874, s. 2.

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18, para. 1	... { 9, 2 31, 3 194, 3	3	... ..
21	... { 31, 3 380, 1	38	... 7, para. 2.
19	... 6	39 <sup>3</sup>	... 7, para. 1, cl. 2, and paras. 3, 8.
20, para. 1	... 32, para. 1	40, para. 1	... 13, para. 1
2	... 32, para. 1	2	... 2
3	... 32, para. 2	3	... 3
<i>Expt.</i>	... 33, para. 1, cl. 1, and para. 2	41	... 17 1, cl. 2
21	... 36, and 37, para. 1	42, para. 1	... 14 1
22	... 36	2	... 2
23	... 37, and 192, para. 2	3 <sup>4</sup>	... 3
24	... 36	43	... 39
25	... 37, and 192, paras. 2 and 3	44, para. 1 <sup>5</sup>	... 193 1
26	... 36	2	... 201, <i>Provisos</i> 1 & 3
27	... 37, and 192, paras. 2 and 3	3	... ..
28	... 36	4	... 539, para. 1
29	... 37	45	... 346 1
30	... 36	2	... 2
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33	... 543	46, paras. 1 & 2	349
34	... 541	3	347
34, cl. (9)	... 540, cl. (8)	<i>III.</i> <sup>6</sup>	... ..
35	... 10	47	... 1 <sup>7</sup> ... 539, para. 1.
36 <sup>2</sup>	... 30, 34, & 380, para. 1	2	... 407 2
37, para. 1	... 12, para. 1	48	... 539 2
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		50	... 15, para. 1

<sup>2</sup> See Act XI, 1874, s. 3.<sup>3</sup> See Act XI, 1874, s. 4.<sup>4</sup> Ditto ditto, s. 5.<sup>5</sup> and <sup>7</sup> See Act XI, 1874, s. 6.

Ditto ditto, s. 7.



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53 ...	16	68 ...	182, para. 1
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59 <sup>1</sup> ...	505	3 ...	.....
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62 ...	422, cl. 1	2 ...	446
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(b) ...	.....	84 ...	454
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<sup>1</sup> See Act XI, 1874, s. 8.<sup>2</sup> Ditto ditto, s. 9.<sup>3</sup> Repealed by Act XI, 1874, s. 10.<sup>4</sup> See Act XI, 1874, s. 11.<sup>5</sup> and <sup>6</sup> See Act XI, 1874, s. 12.

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87 ...	463	108 ...	64
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89 ...	44	110 ...	156, paras. 2 and 3
90 ...	43	111 ...	1, para. 2
91 ...	42	112 ...	155
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104 ...	351	3 ...	...
105 ...	59, para. 1, cl. 1	128, para. 1 ...	507, para. 1
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129 ...	508	144, paras. 1 & 2	201, para. 1
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3 ...	4	146	203
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174 ...	187	<i>Expln.</i> ...	344, <i>Expln.</i>
175 ...	188	195 ...	210, para. 1
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<sup>1</sup> See Act XI, 1874, s. 13.  
Ditto ditto, s. 14.



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207 ...	245, para. 1	(7) ...	(e)
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<sup>1</sup> See Act XI, 1874, s. 15.<sup>2</sup> See Act XI, 1874, s. 16.<sup>3</sup> Ditto ditto, s. 17.<sup>4</sup> Ditto ditto, s. 18.

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249 <sup>2</sup> ...	289	2 ...	422, cl. 1
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		2 ...	para. 1

<sup>1</sup> See Act XI, 1874, s. 19.<sup>2</sup> Ditto ditto, s. 20.<sup>3, 4 and 5</sup> See Act XI, 1874, s. 21.



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1, 2, 3, 4 and 5 See Act XI, 1874, s. 22.  
Ditto ditto, s. 23.  
7 and 8 Ditto ditto, s. 24.

<sup>9</sup> See Act XI, 1874, s. 25.  
<sup>10</sup> Ditto ditto, s. 26.  
<sup>11</sup> Ditto ditto, s. 27.  
<sup>12</sup> Ditto ditto, s. 28.

<sup>13</sup> and <sup>14</sup> See Act XI, 1874, s. 29.  
<sup>15</sup> Ditto ditto, s. 30.

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<sup>1</sup> See Act XI, 1874, s. 31.<sup>2</sup> Ditto ditto, s. 32.<sup>3</sup> See Act XI, 1874, s. 33, para. 1.<sup>4</sup> Ditto ditto, s. 33, para. 2.<sup>5</sup> and <sup>7</sup> Ditto ditto, s. 34.



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3 <sup>1</sup> ...	514, para. 1	350 ...	.....
4 <sup>2</sup> ..	515	351 ...	551
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333 ...	355	354 ...	90
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339 ...	360	362, para. 1 ...	{ 209, para. 2 253, para. 2
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\* 1, 2, and 3 See Act XI, 1874, s. 35.

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380 ...	167	401, para. 1 ...	322
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384 ...	2	404 ...	319
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388 ...	506	5 ...	279, 320
389, para. 1 ...	507, para. 1	6 ...	279, cl. (e)
2 ...	2	406, para. 1, cl. 1	320, cl. 1
390 ...	508	2 ...	(a)
		3 ...	(b)

See Act XI, 1874, s. 36.

<sup>2</sup> See Act XI, 1874, s. 37.



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5	(d)	418, <i>Expln.</i> <sup>2</sup> ...	528, <i>Expln.</i>
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<sup>1</sup> and <sup>2</sup> See Act XI, 1874, s. 38.  
<sup>3</sup> Ditto ditto, s. 39.

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441 ...	224	(p) ...	(c)
442 ...	565	455 ...	237
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445 ...	228	457, <i>Ill.</i> (a) ...	239, <i>Ill.</i> (a)
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447 ...	229	458 ...	240
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449 ...	232	460, para. 1 ...	403, para. 1
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451 <sup>1</sup> ...	233	3 ...	3
452 ...	234	4 ...	4
453 ...	235	<i>Ill.</i> (a) ...	<i>Ill.</i> (a)
453, <i>Expln.</i> ...	...	(b) ...	(b)
454, paras. 1 to 3	236	(c) ...	(c)
454, <i>Ill.</i> (a) ...	236, <i>Ill.</i> (a)	(d) ...	.....
(b) ...	(d)	(e) ...	403, <i>Ill.</i> (d)
(c) ...	(e)	(f) ...	(e)
(d) ...	(f)	(g) ...	(f)
(e) ...	.....	(h) ...	(g)
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(k) ...	.....	2 <sup>2</sup> ...	371, para. 1
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<sup>1</sup> See Act XI, 1874, s. 40.<sup>2</sup> See Act XI, 1874, s. 41.



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5 <sup>2</sup> ...	4, last para.	489, para. 1 ...	{ 107, para. 1 124, paras. 1 to 3
467 ...	196, para. 1, cl. (a)	2 ...	121, para. 1
468 ...	(b)	3 ...	.....
469 ...	(c)	4 ...	.....
470, para. 1 ...	196, para. 2	490 ...	{ 107, para. 1 124, paras. 1 to 3
2 ...	3	491 ...	108
470, <i>Expln.</i> ...	.....	<i>Explns.</i> ...	108, 118
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2 ...	.....	2	107, para. 1, last cl., and 119, <i>Proviso 2nd.</i>
3 ...	477, para. 2	2 ...	.....
473 ...	487, para. 1	494 ...	91
474, paras. 1 & 2	478	<i>Proviso</i> ...	{ 109, para. 1 115, <i>Proviso</i>
3	.....	495 ...	117
475 ...	479	496 ...	1 0
476 ...	478, para. 2	497 ...	{ 119, para. 1 124, para. 1
477 ...	476	498, para. 1 ...	108, 124
478 ...	200	2 ...	124
479 ...	200	499, para. 1 ...	.....
480 ...	128	2 ...	.....
481 ...	129		
482 ...	130		
483 ...	133, cl. (a)		

<sup>1</sup> See Act XI, 1874, s. 41.<sup>2</sup> Ditto ditto, s. 42.<sup>3</sup> See Act XI, 1874, s. 43.

ACT X OF 1872.	BILL.	ACT X OF 1872.	BILL.
499, para. 3 ...	124, paras. 1 & 4	514, para. 1	525, para. 1
<i>Expln.</i> ...	.....	2	paras. 2 & 3
500 ...	125, para. 1, and 126.	3	para. 4
501 ...	127	515, para. 1 ...	113, 115
502, para. 1 ...	525, para. 1	2 ...	110
2 ...	2	3 ...	118, para. 2
3 ...	3	4 ...	522
4 ...	4	516 ...	123
5 ...	1	517 ...	112
6 ...	122	518, with <i>Expln.</i> 1	145, para. 1
7 ...	108, 525	518, <i>Expln.</i> 2 ...	2
503, para. 1 ...	525, para. 1	3 ...	3
2 ...	2 & 3	4 ...	4
3 <sup>1</sup> ...	4	519 ...	144
504, para. 1 ...	110	520 ...	435, para. 3
2 ...	121, para. 1	521 ...	134
3 ...	.....	522 ...	135
4 ...	110	523, para. 1 ...	136
505 ...	111	2 ...	139, cl. (a)
506 ...	111	3 ...	140
507, para. 1 ...	124, para. 2	4 ...	142
2 ...	3	5 ...	139, cl. (c), and 140
508 ...	124, para. 3	524, para. 1 ...	139, cl. (b)
509, para. 1 ...	113	2 ...	.....
2 ...	565	525, para. 1 ...	{ 137, & 138, para. 1 141, para. 2.
510, para. 1 ...	124, para. 1	2 ...	141, para. 3
2 ...	5	526, para. 1 ...	{ 140, para. 1 141, para. 1
511 ...	125, para. 1	2 ...	141, para. 2
512 ...	2	527 <sup>2</sup> ...	138, para. 2
513 ...	127		

<sup>1</sup> See Act XI, 1874, s. 44.<sup>2</sup> See Act XI, 1874, s. 45.



ACT X OF 1872.	BILL.	ACT X OF 1872.	BILL.
528	143	535	1, para. 2
529	1, para. 2	536	488
530	146	537	489
531	147	538	490
532	148	539	568, para. 1
533	149, para. 1	540	1, para. 2
534	533	541	1, para. 2

*Table shewing correspondence of the section-numbers of Act XI of 1874 separately with those of the Bill.*

ACT XI OF 1874.	BILL.	ACT XI OF 1874.	BILL.
1	4, cl. (s) & (t), 28, 205, para. 1	23	.....
2	4, para. 2, cl. 1	24, cl. 1	.....
3	380, para. 1	2	415, <i>Expln.</i>
4	7, para. 1, cl. 2, para. 3	25	559
5	14, para. 3	26	Om., see secs. 421, 423
6	193, para. 1, 539, para. 1	27	422, cl. 2
7	.....	28	423
8	505	29, cl. 1	436, cl. 1
9	179, <i>Proviso</i>	2	<i>Proviso 2</i>
10	.....	30	439
11	538	31	437
12	447, para. 2, 448	32	383, 390
13	340	33	391, para. 2, 394
14	210	34, cl. 1	401, para. 1
15	219, cl. 1	2	4
16	255	3	.....
17	261, cl. (i)	35	514, para. 1, 515, 517
18	194, para. 1	36	166, para. 4
19	287	37	525, para. 5
20	289	38	528, para. 1 & <i>Expln.</i>
21	307, para. 1, 308	39	465, para. 2
22, cl. 1	410	40	233, <i>III.</i>
2	418, 423, <i>Proviso 2</i>	41	371, para. 1, 548
3	371, para. 3	42	4, last para.
4	.....	43	Chapter IX
5	378, 429	44	525, para. 4
		45	138, para. 2

*Table shewing correspondence of the section-numbers of the High Courts Act (X of 1875) with those of the Bill.*

ACT X OF 1875.		BILL.	ACT X OF 1875.		BILL.
1	...	...	31	...	340
2	...	2	32	...	268
3	...	4, 267	33	...	275, 277, 277
4	...	334	34	...	273
5	...	335	35	...	451
6	...	5	36	...	452
7	...	227	37	...	452
8	...	227	38	...	277
9	...	228	39	...	311
10	...	228	40	...	312
11	...	229	41	...	312
12	...	230	42	...	313
13	...	211, 559	43	...	313
14	...	274, 403	44	...	314
15	...	232	45	...	315
16	...	231	46	...	318
17	...	234	47	...	278, 279
18	...	235	48	...	280
19	...	236	49	...	277
20	...	237	50	...	316
21	...	238	51	...	317
22	...	239	52	...	.....
23	...	240	53	...	278
24	...	226	54	...	279
25	...	543	55	...	280
26	...	221	56	...	280
27	...	336	57	...	279
28	...	272	58	...	281
29	...	272	59	...	287
30	...	273	60	...	288



ACT X OF 1875.		BILL.	ACT X OF 1875.		BILL.
61	...	342	92	...	301
62	...	290, 291	93	...	300
63	...	293	94	...	302
64	...	294	95	...	304
65	...	297*	96	...	303
66	...	344	97	...	306
67	...	296	98	...	306
68	...	365	99	...	284
69	...	295	100	...	309
70	...	554	101	...	434
71	...	519	102	...	241
72	...	520	103	...	384
73	...	.....	104	...	384, 385
74	...	523	105	...	386, 387
75	...	289	106	...	556, 557
76	...	513, 514, 515, 517	107	...	.....
77	...	338	108	...	392, 394, 395
78	...	339	109	...	35
79	...	.....	110	...	396
80	...	551	111	...	397
81	...	91	112	...	399
82	...	88	113	...	368
83	...	90	114	...	382
84	...	91	115	...	528
85	...	292	116	...	555
86	...	95	117	...	403
87	...	97	118	...	222
88	...	105	119	...	522
89	...	485	120	...	465
90	...	298	121	...	466
91	...	299	122	...	467

ACT X OF 1875.		BILL.	ACT X OF 1875.		BILL.
123	...	468	139	...	524
124	...	470	140	...	107
125	...	471	141	...	107
126	...	473	142	...	533
127	...	472	143	...	1
128	...	474	144	...	.....
129	...	475	145	...	195
130	...	341	146	...	333
131	...	197	147	...	537
132	...	198	148	...	501
133	...	196	149	...	550
134	...	196	150	...	352
135	...	476	151	...	345
136	...	508	152	...	25
137	...	525	153	...	.....
138	...	525, 527			



*Table shewing correspondence of the section numbers of the Presidency Magistrates' Act (IV of 1877) with those of the Bill.*

ACT IV OF 1877.	BILL.	ACT IV OF 1877.	BILL.
1	.....	31	548
2	.....	32	204
3	1	33	205
4	.....	34	91, 205
5	342, 568	35	205
6	4	36	91
7	.....	37	206
8	7, 18, 19, 20, 25	38	197
9	18, 20, 21	39	198
10	3	40	196
11	32	41	196
12	33	42	196
13	35	43	196
14	5	44	476
15	64	45	200
16	165	46	196, 197, 198
17	562	47	68
18	178	48	69
19	180	49	70
20	181	50	73
21	183	51	74
22	182	52	94
23	186	53	91
24	542	54	187
25	192	55	187
26	.....	56	75, 77
27	205	57	.....
28	192	58	76
29	199	59	77
30	201	60	80

ACT IV OF 1877.		BILL.	ACT IV OF 1877.		BILL.
61	...	.....	92	...	217
62	...	65	93	...	218
63	...	83	94	...	222, 222
64	...	84, 85	95	...	223
65	...	86, 87	96	...	224
66	...	.....	97	...	565
67	...	88	98	...	226
68	...	89	99	...	228
69	...	90	100	...	228
70	...	63, 506	101	...	229
71	...	507	102	...	230
72	...	509	103	...	232
73	...	510	104	...	231
74	...	506	105	...	234
75	...	511	106	...	235
76	...	512	107	...	236
77	...	525	108	...	237
78	...	525	109	...	238
79	...	525	110	...	239
80	...	524	111	...	240
81	...	208	112	...	241
82	...	209	113	...	403
83	...	209, 353	114	...	242, 370
84	...	364	115	...	362
85	...	551	116	...	255
86	...	344	117	...	247, 548
87	...	210	118	...	248, 260
88	...	211	119	...	243
89	...	211, 214, 221	120	...	244, 256
90	...	211	121	...	245, 257
91	...	212, 213, 214, 220, 292	122	...	255, 256
			123	...	364



ACT IV OF 1877.		BILL.	ACT IV OF 1877.		BILL.
124	...	93, 344	155	...	523
125	...	249	156	...	350
126	...	246, 259, 370	157	...	513
127	...	347	158	...	513
128	...	348	159	...	97
129	...	505	160	...	99
130	...	340	161	...	102
131	...	341	162	...	103
132	...	352	163	...	105
133	...	260, 345	164	...	103
134	...	551	165	...	104
135	...	91	166	...	52
136	...	91	167	...	411, 412
137	...	88, 89	168	...	417, 427
138	...	90	169	...	419
139	...	553	170	...	559
140	...	92	171	...	420
141	...	485	172	...	421
142	...	245	173	...	422
143	...	253, 258	174	...	423
144	...	95	175	...	426
145	...	97	176	...	428
146	...	96	177	...	548
147	...	105	178	...	548
148	...	342	179	...	423
149	...	343	180	...	404
150	...	337	181	...	537
151	...	339	182	...	441
152	...	519	183	...	383, 390
153	...	520	184	...	384
154	...	522	185	...	386, 387, 388, 389, 549

ACT IV OF 1877.	BILL.	ACT IV OF 1877.	BILL.
186 ...	556	217 ...	91, 115
187 ...	391	218 ...	117
188 ...	392	219 ...	120
189 ...	394	220 ...	119
190 ...	393	221 ...	124
191 ...	395	222 ...	113
192 ...	396	223 ...	124
193 ...	397	224 ...	121
194 ...	464	225 ...	125
195 ...	469	226 ...	127
196 ...	466	227 ...	122
197 ...	467	228 ...	525
198 ...	468	229 ...	525
199 ...	470	230 ...	522
200 ...	471	231 ...	108, 110, 111
201 ...	473	232 ...	112
202 ...	472	233 ...	533
203 ...	474	234 ...	488
204 ...	475	235 ...	489
205 ...	480	236 ...	490
206 ...	247, 482	237 ...	568
207 ...	484	238 ...	185
208 ...	107	239 ...	185
209 ...	107	240 ...	432
210 ...	121	241 ...	433
211 ...	.....	242 ...	251, 563
212 ...	110	243 ...	528
213 ...	111	244 ...	528, 534, 535
214 ...	111	245 ...	555
215 ...	108	246 ...	44
216 ...	113, 114	247 ...	42



## STATEMENT OF OBJECTS AND REASONS.

No less than three Codes of Criminal Procedure are now in operation in British India: Act X of 1872, amended by Act XI of 1874, which is in force throughout the Mufassal; the High Courts' Act, X of 1875, which is in force in the Presidency-towns, Allahabad and Lahore; and the Presidency Magistrates' Act, IV of 1877, also in force in the Presidency-towns.

Many of the provisions of these Codes merely repeat one another; many of their rules, though dealing with the same subjects, unnecessarily vary in language; and the result is that the bulk of the Indian Statute-book is far greater than need be and that the Courts when construing one Code are often deprived of the guidance of prior decisions on another.

The primary object of this Bill, which has been framed at the suggestion of the Secretary of State, is to recast the Code of 1872, combining with it the substance of the High Courts' Act and the Presidency Magistrates' Act, and incorporating in it the numerous reported decisions on its wording, and thus at last give to India a single and complete Code of Criminal Procedure, and carry out, so far, the policy of providing a simple and uniform system of law for this country. The language and arrangement of Act X of 1872 have, for obvious reasons, been departed from only so far as is necessary for the main purpose of the Bill.

2. Though many of the outlying Acts and Regulations dealing with Criminal Procedure were repealed and re-enacted by Act X of 1872, many more are still untouched, and the secondary object of the present Bill is to consolidate these enactments, which are twelve in number:—

*Acts.*

XXIII of 1840 (Execution of process).  
XXXIV of 1850 (State-Prisoners).  
III of 1858 (State-Prisoners).  
V of 1861, sections 6, 24, 37 to 40 inclusive, part of section 35 (Police).  
XVIII of 1862 (Administration of Criminal Justice in the High Courts).

II of 1869 (Justices of the Peace).  
XXII of 1870, sections 2 and 4 (Application to European British subjects of Acts giving summary jurisdiction).  
XXI of 1879, Chapter III (Inquiries in British India into crimes committed abroad by British subjects).

*Regulations.*

Bengal Regulation III, 1818 (State-Prisoners).  
Bengal Regulation XX, 1825 (Jurisdiction of Courts Martial).  
Madras Regulation II, 1819 (State-Prisoners).  
Bombay Regulation XXV, 1827 (State-Prisoners).

3. The result of consolidating the Acts and Regulations above specified will be to substitute a single Act of 568 sections for fifteen enactments containing 1,055 unrepealed sections.

4. The present Bill is divided into nine Parts, the first containing the usual preliminary matter; the second dealing with the constitution and powers of the Criminal Courts and offices; the third containing some general provisions; the fourth treating of the prevention of offences; the fifth, of information to the Police and of their powers to investigate; the sixth, of proceedings in prosecutions; the seventh, of appeal, reference and revision; the eighth, of special proceedings; the ninth, of supplementary provisions.

*I.—Preliminary.*

5. Part I consists of a single chapter containing the usual preliminary matter. The wording of some of the definitions in Act X of 1872 has been amended, and definitions of 'to sign,' 'public prosecutor,' 'pleader,' 'offence,' 'chapter,' 'schedule,' 'place,' and 'police-station' have been added. The definition of 'complaint' has been amended so as to exclude the report of a Police-officer and information given to a Police-officer; and the definition of 'investigation' has been extended so as to comprise the proceedings of persons authorized by a Magistrate under section 160 or 203 to make local investigations. The definition of 'cognizable offence' has been amended so as to connect it with the second schedule. A clause has been added to the definition of 'High Court' so as to enable the Governor General in Council to appoint in outlying territories where no such Court is established by law, an officer to perform its functions under the Code. Words such as 'special law,' 'local law,' defined in the Penal Code will have the meanings attached to them respectively by that Code. On the other hand, the definitions of 'inquired into,' 'trial,' 'Magistrate's case,' have been omitted as not needed in the Code in its revised form.

*II.—Criminal Courts.*

6. Part II (concerning the powers and offices) consists of two chapters, of which the first deals (a) with the classes of Criminal Courts, (b) with territorial divisions, (c) with Courts inside the Presidency-towns, (d) with the Courts of the Presidency Magistrates, (e) with Justices of the Peace and (f) with the suspension and removal of Judges, Magistrates and Justices of the Peace. The provisions of the Police Act (V of 1861), section 6, have been incorporated in this chapter, section 14. The Local Government has been empowered (section 16) to make rules for the guidance of Magistrates' Benches. This will result in uniformity of practice wherever such uniformity is desirable. Assistant Sessions Judges have been declared (section 17) subordinate to the Sessions Judge in whose Court they exercise jurisdiction. This will preclude a doubt which has been raised on the subject.

The second chapter treats of the powers of Judges and Magistrates, the description of offences cognizable by each Court, the sentences which may be passed by Courts of various classes, and the mode of conferring powers on the latter. The changes of the law here made are little more than verbal, save in the following cases. Magistrates of the first class are forbidden (section 29) to try offences under special or local laws which are punishable with imprisonment for more than seven years: such grave cases should be tried by a higher Court. All Magistrates of the first and second classes, and all Magistrates of the third class when specially empowered, are to have the powers of an officer in charge of a Police-station (section 38). It is desirable that the police powers which Magistrates can exercise in investigating offences should be clearly defined. In section 40 (= Act X of 1872, section 56), as to the continuance of powers of an officer transferred to another local area, words have been introduced to shew that powers conferred by one Local Government do not accompany an officer, when he is transferred to a province under another Local Government.

In connection with section 33, as to power to sentence to imprisonment in default of payment of fine, it will be necessary to pass simultaneously with the Bill a short Act amending section 67 of the Penal Code, by inserting a declaration that such imprisonment shall be simple.

Section 35 declares, in accordance with a decision of the Bombay High Court, that, for the purpose of confirmation or appeal, a combined sentence, in case of simultaneous convictions for several offences, shall be deemed to be a single sentence.

*III.—General Provisions.*

7. Part III contains certain general provisions which it seems convenient to group together and which, to avoid forward references, must stand near the beginning of the Code. They relate to the following matters: aid and information to the Magistrates, the Police and persons making arrests: arrest, escape and retaking: processes to compel appearance and production of documents, and processes for the discovery of persons wrongfully confined. Here, again, the changes in the law are little more than verbal. But to the offences which the public are bound to assist in preventing, have been added (section 42) attempts to injure public property, railways and canals: the public (section 42) must assist in cases of fire dangerous to human life or valuable property: the section (45) requiring village-headmen, &c., to report, has, for obvious reasons, been extended to escaped convicts and proclaimed offenders, and (to provide for villages in hill-passes through which bands of dacoits habitually proceed), also to cases where the criminal merely goes through the village: the section (46) authorizing, in the case of forcible resistance, the use of necessary means to effect arrests, has been extended to meet the case of attempts to evade them: power has been given (section 49) to break open the doors of a house for the purpose of liberating persons who have lawfully entered for the purpose of making arrests therein: persons making arrests have been expressly empowered (section 53) to take from the person arrested any offensive weapons which he may have about him: the police have been authorized (section 54) to arrest, without warrant, deserters from the Navy; and sections (66, 67) equivalent to Act XXV of 1861, section 112, have been inserted to provide for the retaking of persons escaping or rescued from lawful custody.

The wording of section 178 of the present Code, which empowers the police to use "all means necessary to effect the arrest" of a person forcibly resisting or attempting to escape, appears dangerously wide. The Bill accordingly explains that this power does not give the right to cause the death of an arrested person who is not accused of a capital offence. The Bill here follows the law of Scotland, which, in Mr. Mayne's opinion, is in India the safer rule.

8. Under the present Code (Act X of 1872, section 153), summonses issued by Magistrates are ordinarily served "through a Police-officer:" the Bill (section 68) provides that (subject to rules to be made by the Local Government) they may also be served by an officer of the Court. Provision is made (sections 73, 74) for the service of a summons outside the local jurisdiction of the Magistrate who issues it, and for the proof of such service.



9. Section 75 requires that all warrants of arrest, whether issued by a Magistrate in Presidency-towns or the Mufassal, shall be sealed. Act IV of 1877, section 56, contains provisions which cases require a seal. Warrants of arrest issued by a Bench of Magistrates may be sealed by any member of the Bench. This will legalise what probably is the practice at present.

Sub-divisional Magistrates have been empowered (section 78) to issue direct warrants to landholders, &c., for the arrest of escaped convicts. This extension is in harmony with the large powers generally possessed by Magistrates in charge of sub-divisions.

10. Section 88 clears up a doubt as to the commencement of the period provided in the corresponding section (171) of Act X of 1872, for the appearance of a person absconding against whom a warrant has been issued.

11. On the other hand, the power to arrest without warrant persons against whom a hue and cry has been raised is omitted, as that obsolete common-law process is unknown in India; and the section authorizing masters and mates to arrest deserters from ships is omitted, as the matter is sufficiently provided for by the Merchant Shipping Act.

12. The present Code does not provide how attachment of debts and other moveable property is to be effected. Provision has, therefore, been made (section 89) for this purpose; and the powers, duties and liabilities of receivers have been declared by reference to the Code of Civil Procedure.

13. A person required merely to produce a document will (as under the Civil Procedure Code, section 164) be deemed to have complied with the requisition, if he causes the document to be produced instead of attending personally to produce it (section 95).

14. Section 99 of the Bill has been retained pending the opinion of Local Governments as to the expediency of its retention. It seems to be rendered superfluous by section 97.

Provision is made (section 104) for making a list (signed by witnesses) of things found in execution of a search-warrant beyond the jurisdiction of the Court issuing it. It is believed that the necessity of obtaining the signature of the witnesses will be of use as a check upon the irregularities which, it is said, sometimes occur in the course of searches. Criticism of this proposed change in the law is solicited.

15. A clause (section 101) has been inserted giving Presidency Magistrates, Magistrates of the first class, and Sub-divisional Magistrates, power to issue warrants to search for persons wrongfully confined. No such power, though needed, is supposed to exist in India, except, of course, in the Presidency-towns, where the High Courts issue, under Act X of 1875, directions of the nature of a *habeas corpus*.

#### IV.—Prevention of Offences.

16. Part IV, which relates to the prevention of offences, comes, it is considered, properly before Part VI, which relates to their prosecution. It comprises six chapters dealing respectively with security for keeping the peace and for good behaviour; the dispersion of unlawful assemblies; suppression of nuisances; disputes as to immoveable property; and, lastly, the preventive action of the Police.

17. In the chapter relating to security for keeping the peace, and for good behaviour, the section (107) dealing with security for keeping the peace on conviction has been extended to cases in which the accused is convicted of criminal intimidation by threatening injury to person or property. This is an offence of the same nature as taking unlawful measures with the intention of committing a breach of the peace, and should, therefore, as regards the taking of security, be placed on the same footing. When the conviction is set aside on appeal or otherwise, the bond will become void. On this the present law is silent.

In section 111 (= sections 505, 506 of the present Code) the words which give the Magistrate power to demand security from persons of notoriously bad livelihood or of a "dangerous character" have been omitted. It has been objected that these words are vague, and that the powers which they place in the hands of the police are liable to great abuse.

The Magistrate is empowered (section 113) to make an order as to the character and class of the sureties required. This, it is hoped, will prevent certain persons making a trade of becoming sureties. The object of the law (as will be seen from section 399 of the present Code) is not merely to provide a money-security, but also to obtain respectable persons as guarantees for the good behaviour of the criminal concerned.

For the purposes of the section (118) as to enquiring into the truth of the information upon which a Magistrate has acted under this chapter, the fact that a person is an habitual offender may be proved by evidence of general repute.

The Bill contains no provision corresponding to sections 499 of the present Code and 211 of the Presidency Magistrates' Act. If, before the expiration of the term of the original bond, it appears to the Magistrate unsafe to release the obligor at the end of that term, in justice to the obligor fresh proceedings should be instituted.

Some change has been made (section 118) in the manner of conducting inquiries regarding security for good behaviour. They will under the Bill be made as in warrant-cases, instead of as in summons-cases, which is now the practice. Where the person who would otherwise be

ordered to give security is a minor, the bond (section 119) will be executed only by his sureties. It has been made clear in section 127 that a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, and Magistrate of the first class can cancel a bond on the application of a surety. Sub-divisional Magistrates are empowered (section 110) to require security for good behaviour.

18. In the chapter (IX) on dispersion of unlawful assemblies, volunteers enrolled under the Indian Volunteers Act, 1869, are placed on the same footing as soldiers of Her Majesty's Army.

19. In Chapter X, section 134 has been extended to cases of keeping goods or merchandise injurious to the public health, and of carrying on occupations offensive to the religious feelings of any considerable section of the community. Criticism is invited on the latter alteration, which is intended to meet such cases as that of a butcher exercising his trade in a Hindú town, so as to cause risk of breach of the peace.

The power conferred by section 518 of the present Code is intended to be exercised only in urgent cases where a speedy remedy is desirable. The Bill (section 145) provides that no orders under Chapter XI shall remain in force for more than two months, unless in case of danger to human life, health or safety, or a riot or affray, the Local Government directs otherwise. Where time allows the procedure must be under Chapter X.

20. Chapter XII, on disputes as to immoveable property, has been expressly restricted to cases in which the dispute is as to the right to *physical* possession.

Doubts have been raised as to whether the report of the person deputed (under section 149) to make a local inquiry may be read as evidence in the case. The Bill now settles this in the affirmative.

#### V.—*Information to the Police, and their power to investigate.*

21. Part V consists of a single chapter relating to information to the Police and their power to investigate. It corresponds with Chapter X of Act X of 1872, and sections 379 and 380 of the same Act.

22. The words "or that immediate arrest is not necessary," which are to be found in section 117 of Act X of 1872, have been omitted from section 158 of the Bill, as it is not apparent why a Police-officer should be debarred from investigating a case of a cognizable offence because he does not at starting feel himself justified in arresting any person.

23. Section 165 makes it clear that confessions to Magistrates shall not only be "taken," but signed and certified, like examinations of accused persons. In the form of memorandum relating to confessions words have been introduced to show that the confession was taken in the Magistrate's presence and hearing, and that it contains a full and true account of the statement.

24. The sections (166 and 167) dealing with searches by the police have been amended so as to meet difficulties which have arisen in practice. Section 168 has also been amended. On the one hand, there is strong objection to allowing an accused person to be detained at a Police-station longer than is necessary, and, on the other, to insist on his being forwarded to the Magistrate, when his presence on the spot may be indispensable for tracking out crime or recovering property, might be a serious impediment to justice. Under proper precautions, the retention of the accused for sufficient reasons will, as now, be allowed, but the period of detention has been limited to fifteen days in the whole.

25. Power resembling that conferred on Coroners by Act IV of 1871, section 11, has been given (section 177) to Magistrates authorized to hold inquests, to disinter and examine corpses in order to discover the cause of death.

#### VI.—*Proceedings in Prosecutions.*

26. Part VI treats of proceedings in prosecutions up to appeal, and is divided into sixteen chapters, arranged as follows:—

- XV. Jurisdiction of Criminal Courts in Inquiries and Trials.
- XVI. Complaints to Magistrates.
- XVII. Commencement of Proceedings before Magistrates.
- XVIII. Inquiry into cases triable by the Court of Session or High Court.
- XIX. The Charge.
- XX. Trial of Summons-Cases by Magistrates.
- XXI. Trial of Warrant-Cases by Magistrates.
- XXII. Summary Trials.

- XXIII. Trials before High Courts and Courts of Session.
- XXIV. General Provisions as to Inquiries and Trials.
- XXV. Evidence.
- XXVI. The Judgment.
- XXVII. Submission of Sentences for Confirmation.
- XXVIII. Execution.
- XXIX. Suspensions, Remissions and Commutations of Sentences.
- XXX. Previous Acquittals or Convictions.



It will be seen that the above-mentioned chapters are arranged, as nearly as may be, according to the chronological order of the events in a prosecution.

27. Chapter XV (as to the jurisdiction of the Courts in inquiries and trials) deals, first, with the place of inquiry or trial; and, secondly, with the conditions requisite for the initiation of proceedings.

Sections 9 and 10 of the Foreign Jurisdiction Act (XXI of 1879), which deal respectively with the liability of British subjects for offences committed out of British India, and with the reception in evidence of depositions made before Political Agents, have been transferred to this part of the Code (sections 189 and 190), which is obviously their proper place.

28. To the provisions contained in the existing law regarding the transfer of cases, there has been added a clause, providing that, when any Magistrate of the first class, specially empowered in this behalf by the Magistrate of a district, has taken cognizance of any case, he may transfer it for inquiry or trial to any other competent Magistrate in such district. This will enable such Magistrates to distribute the work in their Courts, when it is necessary to do so, with less delay than at present.

29. Section 196 requires that the sanction to entertain complaints of certain offences shall, so far as practicable, specify the place in which, and the occasion on which, the offence complained of was committed. Provision has been made for the revocation of the sanction by any authority to which the authority giving it is subordinate. And in order to remove doubts which have been felt on the point, it is declared that, for the purposes of this section, every Court shall be deemed to be subordinate to the Court to which appeals from the former Court ordinarily lie.

30. Chapter XVI, of complaints to Magistrates, corresponds to sections 144 to 147 of Act X of 1872, but adds (section 202) a provision that a complaint in writing made to a Magistrate not competent to entertain it shall be returned for presentation to the proper tribunal.

The Bill makes it clear that the power (section 203) to postpone the issue of process cannot be exercised by a Magistrate of the third class.

31. In Chapter XVIII, of inquiry into cases triable by the Court of Session or High Court, power is given (section 210) to the Magistrate to discharge the accused at any stage of the case if, for reasons to be recorded, the Magistrate considers the charge to be groundless.

32. Chapter XIX, of the charge, extends to the whole of British India the amendments in Act X of 1872, sections 439 to 459, made by Act X of 1875; and with reference to Mr. Justice West's observations in *Reg. v. Chand Hur*, 11 Bomb. 241, on the corresponding section (457) of Act X of 1872, section 239 of the Bill has been confined to offences consisting of several particulars, a combination of some only of which constitutes a complete minor offence.

From the section (236) relating to joinder of charges, corresponding with section 454 of the present Code, have been omitted all provisions as to the amount of punishment. They obviously belong to substantive law, not to procedure, and will find their proper place in the Penal Code. The illustrations have also been amended.

Provision has been made in section 239 for the case where a person charged with an offence proves circumstances which reduce it to a minor offence. He may then be convicted of the minor offence, though he is not charged with it.

33. Chapter XX, Trial of Summons-cases.—To the section (251) relating to frivolous and vexatious complaints, a clause has been added, providing that, when awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

34. In Chapter XXI, of trials of warrant-cases, as in Chapter XVIII, has been inserted a clause (section 254) authorizing the Magistrate to discharge the accused at any stage of the case if, for reasons to be recorded, the Magistrate considers the charge to be groundless. The provision (Act X of 1872, section 218) that the accused shall, while making his defence, be allowed to recall and cross-examine the witnesses for the prosecution, has been expressly confined (section 257) to cases where the witnesses are present in the Court or its precincts. The power to recall witnesses for the prosecution after they had left the Court is said to be often abused for the purpose of harassment and delay.

35. In Chapter XXII, summary trials, the Local Government has been authorized to confer on Benches invested with second or third class powers jurisdiction to try abetments of, and attempts to commit, the offences which they may now try summarily. The offences of retaining stolen property not exceeding Rs. 50 in value, and assisting in the concealment or disposal of stolen property not exceeding Rs. 50 in value, have been added to the list of those triable in a summary way; and the offence of receiving stolen property will not be so triable where its value exceeds that amount.

36. Chapter XXIII provides a common procedure for the High Court and the Court of Session, preserving, however, the special rules as to juries and their verdicts.

The power to stay proceedings on an unsustainable charge has been extended (section 274) to the Court of Session.

The power of directing how jurors shall be chosen by lot has been transferred to the High Court from the Local Government (section 277).

Where there are several accused persons and one of them has stated that he means to alledge evidence, the prosecutor (section 293) will be entitled to reply.

Where jurors or assessors have been taken to view the place in which the offence charged is alleged to have been committed, the Court has been empowered (section 294) to exempt them from being immediately brought back.

Where the Sessions Judge disagrees with a verdict of acquittal and submits the case to the High Court, he is required (section 308) to state the offence which he considers to have been committed, and the High Court is empowered to acquit or convict the accused of any offence of which the jury could have convicted him upon the charge framed and placed before it. This, it is believed, is the intention of the corresponding clause of section 263 of Act X of 1872.

37. Chapter XXIV, General Provisions as to Inquiries and Trials.—At the instance of many authorities consulted, the power of tendering conditional pardons to accomplices, which is now exerciseable only in cases triable by the Sessions Court, has been extended (section 337) to all warrant-cases. This change, which has been advocated by many authorities, is an important one, and further opinions on its propriety are desirable.

38. Much doubt exists as to the offences which may lawfully be compounded. The Exception to section 214 of the Penal Code (in which the law on the subject is contained) is excessively obscure, and this obscurity is increased rather than diminished by the illustrations annexed to that section. The Bill repeals these illustrations; and section 345 declares in unmistakable language that certain specified offences, and no others, may be compounded. These are—

Causing hurt (Penal Code, sections 323, 334, 337, 338).

Wrongfully restraining or confining (Penal Code, sections 341, 342).

Assault or use of criminal force (Penal Code, sections 352, 358).

Unlawful compulsory labour (Penal Code, section 374).

Mischief, when the loss or damage is caused to a private person (Penal Code, sections 426, 427).

Criminal trespass and house-trespass (Penal Code, sections 447, 448).

Criminal breach of contract of service (Penal Code, sections 490, 491, 492).

Adultery, and enticing, &c., a married woman (Penal Code, sections 497, 498).

Defamation (Penal Code, section 500).

Printing or engraving defamatory matter (Penal Code, section 501).

Sale of printed or engraved substance containing defamatory matter (Penal Code, section 502).

Insult intended to provoke a breach of the peace (Penal Code, section 504).

Criminal intimidation, except when the offence is punishable with imprisonment for seven years (Penal Code, section 506).

The offences of voluntarily causing hurt, voluntarily causing grievous hurt, and cheating, punishable under the Indian Penal Code, sections 324, 335 and 417, will be compoundable with the permission of the Court, and by the person to whom the hurt has been caused, or by the person cheated, as the case may be.

It will be necessary to pass simultaneously with the Bill a short Act declaring that, for the Exception to section 280 of the Penal Code, the following shall be substituted:—  
“*Exception.*—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded.”

39. In Chapter XXVI, as to judgment, section 367 allows the judgments of Mufassal Courts to be written in the mother-tongue of the presiding officer.

40. Chapter XXVIII, Execution.—In section 395 (=section 313 of the present Code) the imprisonment which may be inflicted in lieu of whipping has been limited to three months; but on the other hand, the proviso that the whole period of imprisonment to which the offender is sentenced shall not exceed that to which he was liable by law, or that which the Court is competent to award, has been cancelled, and the power to imprison is thus extended. Criticism is sought on this alteration.

41. There are no sections in this chapter corresponding with sections 319, 320 of Act X of 1872. The reason for this omission is that the matter with which they deal does not belong to criminal procedure, but falls within the scope of the Prisoners' Act, 1871; and it is proposed that, simultaneously with the passing of the present Bill, a short Act be passed, substituting for section 33 of the Prisoners' Act a section equivalent to Act X of 1872, sections 319, 320.

42. Chapter XXIX, Suspensions, Remissions and Commutations of Sentences.—Where application is made for the suspension or remission of a sentence, the Government is empowered (section 401) to require the presiding Judge of the Court before which the conviction was had to furnish a statement of the facts proved on the trial, and of any facts bearing on the propriety of granting or refusing the application.



The power of the Government to commute punishment (section 402) has been so worded as to authorize a sentence of rigorous, to be commuted to one of simple, imprisonment.

*VII.—Appeal, Reference and Revision.*

43. Part VII deals with appeals, references and the revisional jurisdiction of the High Court.

44. Chapter XXXI.—An appeal has been given (section 405) from orders rejecting applications for delivery of attached property.

45. Section 408 provides that the appeal from a District Magistrate exercising the enhanced powers conferred under section 34 shall lie to the Court of Session in cases in which the sentence has not been submitted to that Court for confirmation, and, when it has been so submitted, to the High Court. This puts the appeals in question on the same footing as appeals from an Assistant Sessions Judge. There seems to be no reason for making any distinction between the two.

46. Section 423, in accordance with a decision of the Madras High Court (I. L. R. 1 Mad. 54), declares that, when an Appellate Court enhances any punishment inflicted by the sentence appealed against, it may inflict punishment of a different kind.

47. In the case of an appeal from an acquittal, section 427 expressly authorizes the High Court to order the accused to be arrested and brought before it, and to commit him to prison pending the disposal of the appeal, or admit him to bail. In the absence of this power cases have occurred in which criminals, afraid of the result of the appeal, escaped, and made the appeal on behalf of the Government of no avail.

48. A section (431) suggested by a decision of the Bombay High Court (I. L. R. 2 Bomb. 564) provides that appeals by persons required to give security for good behaviour or by convicted persons abate on their death, and that appeals against acquittals abate on the death of the accused. The power of revision conferred by section 439 will enable the High Court, where justice to the family of the convicted person may so require, to alter his sentence even after the appeal has abated.

49. Chapter XXXII.—Sub-divisional Magistrates empowered by the Local Government in this behalf are authorized (section 435) to call for records of inferior Courts. This is in accordance with the powers of control in other respects which they exercise.

50. Where, in the opinion of the Court of Session or District Magistrate, an accused person has been improperly discharged by an inferior Court, the accused should not be committed without having had an opportunity of shewing cause why the committal should not be made (1 O.K. 98). Provision to this effect has been made by section 436.

51. When the Court of Session or District Magistrate reports for the orders of the High Court the results of examining any proceeding, and recommends that a sentence be reversed, the Court of Session or District Magistrate may order (section 438) its execution to be suspended, and the accused, if in confinement, to be released on bail or on his own bond.

52. Section 439 (corresponding with Act X of 1872, section 297) has been framed so as to allow the High Court, when exercising its revisional jurisdiction, to interfere with improper acquittals. There is reason to believe that this change is in accordance with the intention of the framers of Act X of 1872.

53. Where the High Court exercises its powers of revision, no order (section 440) will be made to the prejudice of the accused, unless he has had an opportunity of being heard.

*VIII.—Special Proceedings.*

54. Part VIII, as to special proceedings, deals with the procedure relating to the following matters:—criminal proceedings against Europeans and Americans: lunatics: contempts of Court and other offences affecting the administration of justice: maintenance of wives and children: State-prisoners: proceedings in the nature of *habeas corpus*.

55. Chapter XXXIII.—Section 451 removes some unnecessary differences which exist in the present law between the procedure of the High Courts and Courts of Session in cases in which European British subjects are concerned. In particular, it is provided that, in the Court of Session as well as in the High Court, the requisite moiety of the jury or assessors may be made up by Americans as well as Europeans. Under the present Code (section 78), the trial of a European British subject before the Court of Session need not be by jury. But under section 234 an European or American, not being a British subject, has an absolute right to be so tried. The Bill omits the latter provision.

56. Chapter XXXIV.—The power given by sections 433 and 434 of Act X of 1872, to discharge from custody or make over to his relative a person acquitted on the ground of insanity, has been extended, in sections 474 and 475, to the case of persons who, being found to be insane at the time of trial, are committed to custody.

57. Chapter XXXV.—This chapter (sections 476, 478, 479, 480, 482) has been expressly made applicable to Revenue Courts.

Section 477 has been framed so as to allow a Court of Session to charge a person for giving false evidence before itself,—a power of which such Courts were unintentionally deprived by section 472 of the present Code.

Where the Local Government so directs, Sub-Registrars will (section 483) be 'Civil Courts' within the meaning of section 480. The position and qualifications of Sub-Registrars vary in different provinces; but, in some parts of the country, they are believed to be fitted for the exercise of these powers.

Section 486 gives an appeal to the High Court from a conviction in a contempt case by a Court of Small Causes in a Presidency-town.

Section 487 has been redrawn so as to avoid the difficulty which is felt in determining the meaning of the words "offence committed in contempt of its own authority," which occur in the corresponding section (473) of Act X of 1872.

#### IX.—*Supplementary Provisions.*

58. Part IX contains certain provisions supplementary to the general rules of procedure contained in the Code. It deals, first, with the public prosecutor, bail, commissions for the examination of witnesses and special rules of evidence. It then contains certain provisions relating to bonds to keep the peace, for good behaviour, for appearance, &c.: the disposal of property regarding which an offence has been committed: the transfer of criminal cases: irregular proceedings; and, lastly, certain miscellaneous matters.

59. Chapter XXXIX, Public Prosecutor.—Power has been given to appoint as public prosecutor, in any case committed to the Session Court, a Police-officer not below the rank of Assistant District Superintendent. The entire exclusion of the police from such a function is, in the opinion of many authorities, inexpedient. With the limitation above described, there will be no fear of intimidation of witnesses or undue influence.

60. Section 505 exempts the Advocate General, Standing Counsel, Government Solicitor or other officer empowered by the Local Government from the necessity of obtaining permission to conduct prosecutions.

61. Chapter XL, Bail.—The powers here given to Police-officers have been expressly confined to officers in charge of Police-stations.

62. Chapter XLI, Commissions for Examination of Witnesses.—The provisions of the present law as to commissions for the examination of witnesses have been amended in four respects. Where the witness resides in a Native State, power has been given (section 513) to issue the commission to the Political Agent or other local officer representing the British Government. Section 515 requires that the interrogatories shall be thought relevant by the Magistrate or Court directing the commission. Where a Subordinate Magistrate wishes for a commission, he will (section 516) apply to the District Magistrate, and not (as at present) to the Sessions Judge: this will relieve the Court of Session of a duty which can be more conveniently performed by the District Magistrate. And power is expressly given (section 518) to stay the inquiry or trial for a specified time reasonably sufficient for the execution and return of the commission.

63. Chapter XLII, Special Rules as to Evidence.—In proving the existence of circumstances as a defence under the 2nd, 3rd, 5th, 6th, 7th, 8th, 9th or 10th Exception to section 499 of the Penal Code, section 521 of the Bill provides that good faith shall be presumed until the contrary appears. This is now the law in the Presidency-towns (Act XVIII of 1862, section 27) and may usefully be extended to the Mufassal.

64. Chapter XLIV, Disposal of property.—In accordance with a recent rule of the High Court at Bombay, section 528 declares that, when a High Court or Court of Session makes an order for the disposal of property, and cannot through its own officers conveniently deliver the property to the person entitled thereto, the Court may direct its order to be carried into effect by the committing Magistrate.

65. Orders under section 528 made in appealable cases will not be carried out until the time allowed for appealing has expired, or, if an appeal is presented in due time, until the appeal is dismissed.

66. Where an innocent purchaser buys stolen property and restores it to the lawful possessor, provision has been made (section 530) for payment of the price out of money found on the convicted thief. This is in accordance with 30 & 31 Vic., cap. 35, section 10.

67. Section 532 provides, in case of a conviction under the Penal Code, sections 292, 293, 501 or 502, for the destruction of the obscene books and defamatory matter in respect of which the conviction was had. It also provides for the destruction of adulterated or noxious food, drink or drugs in respect of which a conviction was had under sections 272—275 of the same Code.

68. Chapter XLV, Transfer of Criminal Cases.—Section 537 provides, in accordance with a Minute of Sir B. Peacock, cited I. L. R. 1 Calc. 223, that applications to the High Court for the transfer of cases shall be made by motion supported by affidavit or affirmation.



69. Chapter XLVI, Irregular Proceedings.—Tender of pardon under Chapter XXIV, and sale of property under section 535 or section 536, have been added to the list of proceedings which will not be set aside merely on the ground of the Magistrate not being duly empowered.

70. Chapter XLVII, Miscellaneous.—Power has been given (section 552) to the Local Government to fix places of imprisonment or custody. Moneys (other than fines) payable by virtue of any order made under the Code will be recoverable as if they were fines (section 558). The power to compel restoration of abducted females, which now exists only in the Presidency towns, has been extended (section 562) to District Magistrates. Power has been given to the High Courts (section 564) to make rules for the inspection of the records of subordinate Courts. And as to miscellaneous criminal proceedings, if any doubt arise as to the procedure to be followed, the Court will be guided by such rules (consistent with the Code) as the High Court may make in this behalf (section 568). The Bill contains no clause equivalent to Act I of 1868, section 5, although similar provisions are contained in each of the Codes now consolidated (X of 1872, section 309, X of 1875, section 107, IV of 1877, section 12). The matter will be provided for by the Bill above-mentioned, to amend the Penal Code.

#### *Schedules.*

71. Schedules II and V, which correspond respectively with Schedules IV and II of Act X of 1872, have been altered so as to adapt them, not only to the Mufassal Courts, but to those of the Presidency Magistrates. The latter schedule now contains no less than 56 forms, which have stood the test of practice in the Presidency of Madras and the Panjáb.

The offence of voluntarily causing hurt has been made one for which the police may not arrest without a warrant. A like change has been made as to voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave it. The numerous investigations by the police into charges of "hurt," which the present law renders necessary, are said to distract the attention of the police-force from more important duties, and to result in little good to the public.

The offence of adultery has been made triable by a Presidency Magistrate and a Magistrate of the first class.

The paragraph relating to mischief by fire with intent to cause damage has been altered in accordance with a proposed amendment of section 435 of the Penal Code. This alteration has been made in order to check the offence, which is very common in some parts of the country, of setting fire to garnered crops. A cultivator may have the whole of his crop destroyed in this way, and yet if its value be less than Rs. 100 (as is often the case) he cannot obtain the aid of the police to arrest the offender without a warrant from a Magistrate.

The lists of powers contained in section 21 *et seq.* of Act X of 1872 have been thrown into Schedules III and IV of the Bill.

72. The Bill was published in the *Gazette of India* for the 5th, 12th and 19th April 1879, and circulated to the various Local Governments, with a request that it might be examined by selected local officers. This was done, and the result of the examination is contained in a thick folio volume. The Bill was then revised with reference to this mass of criticism, and to the cases reported since it was framed; and it may truly be said, in its present form, to be the work of the whole body of Indian Judges and Magistrates rather than of any individual or Department. The additions and changes (other than omissions) which have been made in this second revision are printed in italics. The chief omission is that of the sections relating to limitation, which, in deference to many high authorities, have been struck out as unsuited to India.

73. It is proposed that the measure shall not come into force till 1st January 1883,—ten years from the date on which the present Code came into force. This is five years after the date on which, according to Sir FitzJames Stephen, the Code should have been re-enacted. "I should say," he writes in his well-known Minute on the Administration of Justice in British India, "that this process ought to be repeated at least once in every five years for every important Act."

74. Excluding the special provisions of the Acts relating respectively to Coroners, European British vagrants and criminal tribes, the Bill is now, so far as Mr. Cockerell, Mr. Colvin, Mr. Fitzpatrick and myself have been able to make it, a complete body of criminal procedure. No pains have been spared to render its provisions plain and practical; and in return all competent persons are earnestly asked to point out the mistakes and omissions which, notwithstanding the careful and repeated revision it has undergone, they will doubtless discover in so large and complicated a work.

CALCUTTA;  
The 25th February, 1881. }

WHITLEY STOKES.

D. FITZPATRICK,  
*Secretary to the Government of India.*

[Copy of an Index to the Criminal Procedure Consolidation Bill will be sent to all officers and other persons to whom the *Gazette of India* is supplied.]

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 11th March, 1881, and was referred to a Select Committee:—

## No. 9 of 1881.

*A Bill to amend the Dekkhan Agriculturists' Relief Act, 1879, and for other purposes.*

WHEREAS it is expedient to amend, in manner hereinafter appearing, the Dekkhan Agriculturists' Relief Act, 1879, and to give effect to the registration of certain instruments executed before the said Act came into force and required to be registered under section 71 of the same Act; It is hereby enacted as follows:—

Short title.

Commencement.

1. This Act may be called "The Dekkhan Agriculturists' Relief Act, 1881:" and shall come into force at once.

2. In this Act "section" means a section of the Dekkhan Agriculturists' Relief Act, 1879.

Repeal of last 14 words of section 2.

3. In section two the last fourteen words shall be repealed.

4. In section nineteen, first clause, for the words "there is no other claim against him," the words "the other debts (if any) due by him do not, taken together with such sum, amount to fifty rupees" shall be substituted; and to the same clause the words "of such sum" shall be added.

Addition to section 38.

5. To section thirty-eight, the following shall be added:—

"The expression 'officer of Police' in this section shall not be deemed to include a Police Patel appointed under Bombay Act No. VIII of 1867, (for the Regulation of the Village Police in the Presidency of Bombay)."

6. In section forty-eight after the word "suit" the words "or application" shall be inserted.

Addition to section 56.

7. To section fifty-six the following shall be added, namely,—

"or apply to any instrument which is not executed by an agriculturist otherwise than as a surety."

New section substituted for section 57.

8. For section fifty-seven the following section shall be substituted:—

"57. When any persons desire to execute any instrument to which section fifty-six applies, all the intending parties to such instrument shall appear before the Village Registrar appointed for the area in which the agriculturist, or when there are several agriculturists executing the instrument, any one of such agriculturists, resides, and such Registrar, after satisfying himself in such manner as he deems fit as to the identity of the intending executants and receiving from the intending parties the fee (if any) prescribed by the Local Government in this behalf, and the stamp (if any) which may be required by law, shall write the instrument, or cause the same to be written under his superintendence, and after reading the same aloud, or causing it to be so read in the hearing of the intending parties, shall require the intending executants to execute it in his presence.

"Every instrument so written and executed shall at the time of execution be attested by the Village Registrar, and also, if any of the executants thereof is unable to read such instrument, by two respectable witnesses.

"For the purposes of this section every executant of any such instrument shall appear in person before the Village Registrar, but every other party thereto may appear either in person or by any agent, being his relative, servant or dependent, whom he has duly furnished with a power of attorney authorizing him to appear and act on his behalf."

8. In section fifty-eight for the words "parties to any instrument have executed it," the words "intending executants have executed any instrument" shall be substituted.

9. For section seventy-one the following section shall be substituted:—

New section substituted for section 71.

"71. No instrument executed before the first day of November, 1879, and purporting to create any mortgage, lien or charge of, or upon, any immoveable property belonging to an agri-

All mortgages executed before the 1st November, 1879, to be produced before, and marked by, Village Registrar.



culturist, shall be received in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon by any such person or by any public officer unless such instrument has, before the first day of November, 1881, been produced before the Village Registrar appointed for the area in which the agriculturist, or where there are several such agriculturists, any one of the agriculturists, to whom such property belongs, resides, and been marked by such Registrar in such manner as the Local Government may by rule prescribe :

“ Provided that nothing in this section shall—

“(a) apply to an instrument purporting to create a mortgage, lien or charge in favour of the Government or of any officer of the Government in his official capacity ; or

“(b) prevent the admission of any instrument in evidence in any criminal proceeding.”

10. In section seventy-two the words “ against an agriculturist ” shall be omitted, and in the same section after the word “ money,” the words “ from a person who at the time when

Amendment of section 72.

the cause of action arose was an agriculturist ” shall be inserted.

11. For section seventy-five the following section shall be substituted :—  
New section substituted for section 75.

“ 75. The Local Government may, from time to time, make rules :—  
Additional power to make rules.

“(a) for defining more precisely what classes of persons shall be deemed to be agriculturists for the purposes of this Act ;

“(b) generally for carrying out the provisions of this Act.”

12. Every instrument described in section seventy-one, as amended by this Act, which, before the passing of this Act, has been registered by a Village Registrar in accordance with rules prescribed in this behalf by the Inspector General of Registration, with the previous sanction of the Local Government, shall be deemed to have been duly produced before the Village Registrar and marked by him under the provisions of that section.

Certain instruments to be deemed produced before Village Registrar and marked under section 71.

### STATEMENT OF OBJECTS AND REASONS.

THE Bombay Government have brought to notice difficulties in the working of the Dekkhan Agriculturists' Relief Act, for the removal of which it appears necessary to make certain amendments in that Act, and to carry out those amendments this Bill has been prepared.

The first amendment provided for is in section 2 of the Act. That section enacts in effect that every agriculturist shall be deemed for the purposes of the Act to reside where he works as such. This rule is found to give rise to difficulty in the case of agriculturists holding land in more than one place, and it is accordingly proposed to repeal it altogether.

2. The first portion of section 19 of the Act confers on the Courts power to discharge an insolvent who owes a sum of less than fifty rupees under a decree, and against whom there is no other claim ; but it makes no provision for the case of an insolvent judgment-debtor, against whom there are other claims, but of amounts so trifling that, taken with the amount of the decree, they do not amount to fifty rupees. There appears to be no reason why this latter case should not be treated on the same footing as the former, the insolvency chapter of the Bill being equally inapplicable to both, and the Bill accordingly amends the Act so as to give power to discharge the judgment-debtor from the balance due under the decree in either case.

3. Section 38 of the Act prohibits the appointment of “ an officer of police ” as a conciliator. A doubt has arisen as to whether a police patel is to be deemed an officer of police within the meaning of this provision, and at the instance of the local Government an explanation has been added to the section to show that he is not.

4. The amendment proposed in section 48 of the Act merely corrects an oversight in drafting.

5. The addition which it is proposed to make to section 56 of the Act, is intended to dispense with the necessity of having an instrument executed before the Village Registrar, merely because a party executing it *as a surety* is an agriculturist.

The changes made in sections 57 and 58 are intended merely to make the meaning clearer.

6. The new section, which it is proposed to substitute for section 71 of the Bill, differs materially from the original one, though the object of both is the same, *viz.*, to prevent the fabrication of mortgage deeds purporting to have been executed before the Act came into force.

The section as it now stands in the Act aims at effecting this object by requiring all existing mortgage deeds to be registered before a certain date under the Indian Registration Act ; but it has been found that the practical difficulties in the way of such registration are so great that it is necessary to abandon this procedure and substitute for it the simpler expedient proposed by the Bill, of requiring such deeds to be merely produced before and marked by the Village Registrar before a certain date.

7. Section 72 of the Act, which prescribes periods of limitation longer than the ordinary periods for certain suits against agriculturists, applies in every case in which the defendant is an agriculturist at the time the suit is instituted. This would, in some cases, where the defendant had become an agriculturist shortly before the institution of the suit, lead to anomalous results.

To prevent this the Bill amends the section, so that it will apply only when the defendant was an agriculturist at the time the cause of action arose.

8. Difficulties having arisen as to the construction of the definition of “ agriculturist,” section 75 of the Act, which gives the Local Government a power to make rules, has been recast so as to admit of rules being made, among other matters, to define more precisely what classes of persons shall be deemed to be agriculturists for the purposes of the Act.

9. Section 12 of the Bill is intended to put mortgage deeds, executed before the Act came into force, and registered under a system of questionable legality established by the Local Government, on the same footing as if they had been marked by the Registrar under the new section 71.

The 8th March, 1881.

J. GIBBS.

D. FITZPATRICK,  
Secretary to the Government of India.

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 4th March, 1881 :—

WE, the undersigned Members of the Select Committee to which the Bill to consolidate and

- From Acting Under Secretary to Government, Bombay, No. 7519, dated 9th November, 1880, and enclosures [Papers No. 1].  
 „ Chief Secretary to Government, Madras, No. 2624, dated 2nd November 1880, and enclosures [Papers No. 2].  
 „ Chief Secretary to Government, Madras, No. 2662, dated 17th November, 1880, and enclosure [Papers No. 3].  
 „ D. Sena, Esq., Vakil, High Court, Bombay, dated 26th November, 1880 [Paper No. 4].  
 Note by Hon'ble J. Sewell White, Judge, High Court, Calcutta, dated 13th December, 1880 [Paper No. 5].  
 From Secretary to Government, Bengal, No. 67J., dated 7th January, 1881, and enclosures [Papers No. 6].  
 „ J. Crawford, Esq., Registrar, High Court, Calcutta, No. 970, dated 30th May, 1879 [Papers No. 7].  
 „ Ditto ditto, No. 279, dated 5th February, 1881 [Papers No. 7].  
 „ H. J. Stephen, Esq., Barrister-at-law, High Court, Calcutta, dated 10th February, 1881, and enclosure [Papers No. 8].

amend the law relating to the Courts of Small Causes established in the Presidency-towns was referred, have the honour to report that we have considered the Bill and the papers noted in the margin.

2. We have added a clause to section 6 of the Bill giving the High Courts the

same powers over the Small Cause Courts as they have under the 15th section of the High Courts Act over Courts subject to their appellate jurisdiction.

3. We have altered the section (7) relating to the appointment of the Judges so as to provide that one-third at least of the Judges shall be advocates of a High Court. We think the professional members of the Court should be chosen from the advocates of the High Courts, who may be expected to have acquired some experience of the country.

4. The Bill as introduced made the rank and precedence of the Judges depend on the seniority of their appointment. This would not have answered, as it appears that each seat in the Court has a special rank and salary of its own, and the candidates for appointment are posted to particular seats in the Court with reference to their respective qualifications. The second Judge ought, therefore, always to rank above the third, the third above the fourth, and so on, without any reference to the dates of their appointment, and we have accordingly, in section 8, after providing that the Chief Judge shall be the first in rank, introduced words leaving it to the Local Government to fix the rank of the rest.

5. Another change we have made in the constitution of the Court established by the Bill as introduced, consists in the transfer to the Chief Judge of certain administrative powers (see section 13 and also sections 61 and 62), which, we think, would be more efficiently exercised by a single individual.

6. The only other amendment we need notice in this portion of the Bill is the insertion of a clause in section 13, providing for the appointment of a Registrar and a section (14) empowering the Local Government to invest him with jurisdiction to try suits up to the limit of Rs. 20 in value. This amendment has been made at the instance of the Government of Bengal, and there is a precedent for it in the Mufassal Small Cause Courts Act No. XI of 1865.

7. Turning now to the chapter relating to jurisdiction in respect of suits, the first change we have made will be found in section 18 of the amended Bill (= section 16 of the Bill as introduced). The reasons given for framing that section as it originally stood are thus given in the 7th paragraph of the Statement of Objects and Reasons :—

“ Act IX of 1850, in conferring jurisdiction on the Courts up to a value of Rs. 500, confines its exercise to cases of defendants dwelling or carrying on business within the local limits. Act XXVI of 1864, on the other hand, in conferring jurisdiction between the values of Rs. 500 and Rs. 1,000, gives an alternative ground for its exercise, namely, the circumstance of the cause of action having arisen within the local limits. It has been urged by most of the



authorities consulted that the basis of the jurisdiction should be the same in cases of all values. On the other hand, fears have been expressed by some that a power to institute a suit of the lower value against a defendant residing at a distance might be liable to abuse unless some limitation were imposed. The correct view of the matter seems to be that taken by the Judges of the Madras High Court and Mr. Busteed, namely, that in this particular no distinction should be made between the High Court and the Small Cause Court, and accordingly the Bill has been drawn so as to place the jurisdiction of the Small Cause Court in this respect on precisely the same footing as that on which the jurisdiction of the High Court is placed by the Letters Patent."

The objection to the power to institute a suit in the Small Cause Court against a defendant residing at a distance has been again urged, and it is one to which we feel compelled to yield. We have accordingly inserted words requiring the leave of the Court to be obtained when it is proposed to institute a suit against a defendant residing beyond the local limits of the jurisdiction, and we have made this provision applicable to all suits without regard to value. The original scheme of putting the Small Cause Court jurisdiction on the same footing in this particular as the jurisdiction of the High Court being thus broken in upon, we have thought it best to bring the remainder of the section into conformity with the corresponding provisions of the Code of Civil Procedure.

8. In the following section, which excludes certain classes of suits from the jurisdiction of the Small Cause Court, we have omitted the second clause, "suits against the Secretary of State in Council," as it appears to be generally objected to, and we have added the following:—

- (1) suits for the specific performance or rescission of contracts generally (such suits are, as regards contracts relating to immoveable property, excluded by the Bill as introduced);
- (2) suits for compensation for malicious prosecution;
- (3) suits for the cancellation or rectification of instruments;
- (4) suits relating to general average and to insurances on sea-going vessels;
- (5) suits for compensation in respect of collisions at sea;
- (6) suits for compensation for the infringement of a patent, copy-right or trade-mark;
- (7) suits for a dissolution of partnership or for an account of partnership transactions;
- (8) suits for declaratory decrees;
- (9) suits in which the plaintiff's claim depends on the decision of a question as to religious rites or ceremonies;
- (10) suits for possession of a hereditary office;
- (11) suits against Sovereign Princes or Ruling Chiefs, or against Ambassadors or Envoys of Foreign States.

The reasons for excluding these suits are so obvious that it is unnecessary to state them.

9. We have struck out the second clause of section 21 (new numbering), which deprived a plaintiff of costs in certain cases if he elected to institute in the High Court a suit against an officer of the Small Cause Court for a wrong done by him under colour of its process. We think that in all such cases a plaintiff should be allowed a free choice.

10. We have also struck out the latter portion of section 22 (new numbering), which specified the grounds on which a Judge in other cases, in which suits cognizable in the Small Cause Court are instituted in the High Court, may certify for costs, as we think that in such a matter the Judge should be allowed a full discretion.

11. Proceeding next to chapter V relating to procedure in suits, we desire to state that we have most carefully considered the objections urged against the first section of that chapter which applies to the Small Cause Courts a large portion of the Code of Civil Procedure.

Those objections, in so far as they come from the public, proceed chiefly from those classes of persons who most frequently appear as plaintiffs in suits of a very simple description, and we can well understand the apprehension they feel that the application of so large portion of the ordinary procedure may, in suits of that class, give rise to complication and delay. But it must be remembered that the great bulk of the provisions so extended are of such a nature as to be applicable only in exceptional cases, and we think that any one who follows the thread of the provisions applicable to ordinary suits will find the procedure to be extremely simple. Moreover, we find that a considerable portion of the Code has been actually in force for some time past in the Madras Small Cause Court, where the statistics show the amount of work performed by each Judge to be as large as in the Small Cause Courts at Calcutta and Bombay, and we further find that the Judges of the Calcutta Small Cause Court themselves propose to apply with little variation the great bulk of the sections contained in the second schedule to this Bill.

12. We have, however, in deference to the apprehensions which have been expressed, gone through the schedule item by item, and have struck out some portions; among others those requiring copies of the plaint or concise statements to be filed with the plaint, those relating to discovery, those requiring judgments to be in writing, and the whole chapter relating to pauper suits.

We have, moreover, in order to relieve the Judges, inserted in the body of the Bill a section (35) based on section 637 of the Code, empowering the Court to direct that any non-judicial or quasi-judicial act which the Code requires to be done by a Judge shall be done by a ministerial officer, and we think that the procedure as now settled is as simple as it can safely be made, and as the majority of the litigants would desire it to be.

13. We have added a section providing that no decision passed under the Act shall be conclusive, except as to the right to the relief granted or the absence of a right to the relief withheld by it. This provision, which cuts away to a great extent the doctrine of *res judicata*, will no doubt leave it open to persistent parties to litigate a second time questions which may have been already carefully considered and well decided; but we think it better to take the risk of

this than to take the risk of having difficult questions of title to property of large value and complicated issues governing extensive transactions finally decided under an Act like this in the first petty case in which they may chance to present themselves.

14. We have extended section 27 (new numbering) to cases in which the plaintiff does not altogether fail in his suit, but fails to recover the full amount of his claim and to cases in which unfounded objections are made to the attachment of property in execution of decree.

15. Section 30 is new. The law, as it at present stands in this country, would appear to be peculiarly indulgent to tenants in the matter of the right to remove what they may have attached to the soil, and yet the holder of a decree of the Small Cause Court is probably precluded (unless he chooses to resort to the High Court) from taking in execution of such decree even some such things as might be taken under a *fieri facias* in England. It has, at all events, been held that though tenants in Calcutta have a right to remove "tiled huts," such huts cannot be taken in execution of decrees of the Small Cause Court. The landlords complain of this as a hardship, and we think not without reason; but the remedy should not, in our opinion, be limited to this particular case, and we have accordingly provided that anything which the tenant would be entitled to remove during his tenancy may be taken in the execution of a decree against him as if it were a moveable.

16. We have at the instance of the Judges of the Calcutta Small Cause Court substituted for the latter portion of section 230 of the Code a section (28) providing that no decree of a Small Cause Court shall be executed after the lapse of three years from the date on which it is passed, unless the judgment-debtor by force or fraud has prevented its execution within the three years.

17. We have, in section 34 of the Bill, restored section 31 of Act IX of 1850, which allows minors to sue for a sum not exceeding Rs. 500 due for wages, or piece-work or for work as a servant, as if they were of full age, but we have, to prevent mistake, expressly limited it to cases where such money is due under section 70 of the Contract Act, the only law, as we believe, under which a minor can now acquire a right to such money.

18. The only other amendment we have to notice in the chapter relating to procedure is the insertion of certain sections (36 to 38) providing for the exercise of the jurisdiction which may be conferred on the Registrar under section 14.

19. We have introduced a new chapter (VI) to include the section providing for a new trial and certain additional sections establishing a mode of having a suit of a value above Rs. 500, re-heard in the High Court, as if it had been instituted in that court. These sections, which have been proposed by Mr. Kennedy, are based on the provisions enacted by the 14th & 15th Vic. c. 57, for the Irish Civil Bill Courts, and they have in our opinion this advantage, that they provide, in cases where there has been a failure of justice, a substitute for an appeal without entailing the necessity of any elaborate record of evidence being kept by the Court below.

20. We have omitted the chapters which would have conferred on the Small Cause Courts jurisdiction in certain classes of insolvency and probate business, as we believe that unless the Court were to hear cases which, owing to their intricacy and difficulty, ought to be removed into the High Court, the saving of time to the High Court would be altogether unimportant. There is no doubt that the High Courts at present dispose of much petty business of these classes, but it is done for the most part in the offices of the Court, and costs the Judges little time or labour.

We may add that, so far as the grant of probates and letters of administration is concerned, we believe that the object in view will be better secured by the extension of the certificate system effected by Act No. IX of 1881.

21. We have confined section 59, which prevents the fees of a legal practitioner being recovered as costs unless his employment is held to be reasonable, to cases where the amount or value in dispute is less than Rs. 20. We do not see why in cases where a larger amount is at stake the ordinary rules as to allowing costs should not apply.

22. Lastly, we have inserted a section (72) to determine the functions of legal practitioners in the Small Cause Court. Its first clause provides that no persons other than advocates, attorneys and vakils of the High Court and *persons who are now pleaders of the Small Cause Court* shall appear, plead or act in the Small Cause Court. We do not think it desirable to admit an inferior class of legal practitioners, whose business would be confined to the Small Cause Courts, and, accordingly, while we would save the rights of pleaders already admitted, we would bar the admission of any others.

The second clause of the section confines the right to conduct as counsel a suit at the hearing, in the extended jurisdiction now for the first time conferred on the Court, to advocates and vakils of the High Court, and requires that a barrister so conducting a suit shall be instructed by an attorney or vakil, or by a pleader of the Small Cause Court. The reasons for this latter requirement are obvious.

The section, it need hardly be mentioned, saves the right of parties to conduct their own cases, and appear for one another, and also the rights of recognized agents.

23. The publication of the Bill, with its Statement of Objects and Reasons, in English, has been reported by the Governments of Madras, Bombay and Bengal. We consider that the changes now made are such as to render its re-publication desirable; and we have accordingly altered the date on which it should come into force to the 1st January, 1882, and recommend that it now be re-published.

*The 4th March, 1881.*

WHITLEY STOKES.

J. GIBBS.

G. C. PAUL.

JOTINDRA MOHAN TAGORE.

I THINK that the limit in section 22 ought to be reduced from Rs. 2,000 to 1,000. In other respects I agree in the report.

J. PITT KENNEDY.



## No. II.

THE PRESIDENCY SMALL CAUSE  
COURTS BILL, 1880.

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New.  
See 8 Bom.  
H. C. Rep. (O.  
C. J.) 59  
and sec. 652 of  
Act X of 1877.

6. The Small Cause Court shall be deemed to be a Court subject to the superintendence of the High Court of Judicature at Fort William, Madras or Bombay, as the case may be, within the meaning of the Letters Patent, respectively dated the 28th day of December, 1865, for such High Courts and within the meaning of the Code of Civil Procedure; and the High Court shall have, in respect of the Small Cause Court, the same powers as it has under the 24th & 25th of Vic., chapter 104, section 15, in respect of Courts subject to its appellate jurisdiction.

See Act XXVI  
of 1864, s. 12:  
Act IX of  
1850, s. 5.

7. Subject to the control of the Governor General in Council, the Local Government may, from time to time, by notification in the official Gazette, appoint a person to be Chief Judge, and so many other persons as it thinks fit to be Judges of the Small Cause Court: Provided that not less than one-third of the persons so appointed, including the Chief Judge, shall be advocates of one of the said High Courts.

Act IX of  
1850, s. 10.

The Local Government may, by a like notification, suspend and, with the previous sanction of the Governor General in Council, remove any Judge so appointed.

See Act XXVI  
of 1864, s. 14.

Rank and precedence of Judges.

8. The Chief Judge shall be the first of the Judges in rank and precedence.

Act XVII of  
1877, s. 6.

The other Judges shall have rank and precedence as the Local Government may, from time to time, direct.

Act XVII of  
1877, s. 119.  
(Cf. Act IX of  
1850, s. 23.)

9. Except as otherwise provided by this Act, or any other law for the time being in force, the Small Cause Court may, with the previous sanction of the High Court, make rules to provide, in such manner as it thinks fit, for the exercise by one or more of its Judges of any powers conferred on the Small Cause Court by this Act or by any other law for the time being in force.

Act XXVI of  
1864, s. 14.

10. Subject to such rules, the Chief Judge may, from time to time, make such arrangements as he thinks fit for the distribution of the business of the Court among the various Judges thereof.

Act XI of  
1869, s. 33.

11. Save as hereinafter otherwise provided, when two or more of the Judges sitting together differ on any question, the opinion of the majority shall prevail; and if the Court is equally divided, the Chief Judge, if he is one of the Judges so differing, or in his absence the Judge first in rank and precedence of the Judges so differing, shall have the casting voice.

Act XVII of  
1875, s. 10(6).  
(Cf. Act IX of  
1850, s. 24.)

12. The Small Cause Court shall use a seal of such form and dimensions as are for the time being prescribed by the Local Government.

Act IX of  
1850, ss. 13-15.

13. The Local Government may, from time to time, appoint an officer to be called the Registrar of the Court, and to be the chief ministerial officer of the Court; and the Chief Judge may, from time to time, subject to the control of the Local Government,

appoint as many clerks, bailiffs and other ministerial officers as may be necessary for the administration of justice by the Court and for the exercise and performance of the powers and duties conferred and imposed on it by this Act or any other law for the time being in force.

The Registrar and other officers so appointed shall exercise such powers, and discharge such duties, of a ministerial nature as the Chief Judge (subject to the control of the High Court) may, from time to time, by rule, direct.

The Chief Judge may suspend or remove any Registrar or other officer so appointed; but the removal of any Registrar or officer drawing a monthly salary of one hundred rupees or upwards shall be subject to the orders of the Local Government.

14. The Local Government may invest the Registrar with the powers of a Judge under this Act for the trial of suits in which the amount or value of the subject-matter does not exceed twenty rupees. And, subject to the orders of the Chief Judge, any Judge of the Small Cause Court may, whenever he thinks fit, transfer from his own file to the file of the Registrar any suit which the latter is competent to try.

15. No Judge or other officer appointed under this Act shall, during his continuance as such Judge or officer, either by himself or as a partner of any other person, practise or act, either directly or indirectly, as an Advocate, Attorney, Vakîl or other legal practitioner, or be concerned, either on his own account or for any other person, or as the partner of any other person, in any trade or profession.

Any such Judge or officer so practising, acting or concerned shall be deemed to have committed an offence under section 168 of the Indian Penal Code.

Nothing herein contained shall be deemed to prohibit any such Judge or officer from being a member of any company incorporated or registered under Royal Charter, Letters Patent, Act of Parliament or Act of any British Indian Legislature.

### CHAPTER III.

#### LAW ADMINISTERED BY THE COURT.

16. All questions other than questions relating to procedure or practice which arise in suits or other proceedings under this Act in the Small Cause Court shall be dealt with and determined according to the law for the time being administered by the High Court in the exercise of its ordinary original civil jurisdiction.

### CHAPTER IV.

#### JURISDICTION IN RESPECT OF SUITS.

17. The local limits of the jurisdiction of each of the Small Cause Courts shall be the local limits for the time being of the ordinary original civil jurisdiction of the High Court.

18. Subject to the exceptions in section nineteen, the Small Cause Court shall have jurisdiction to try all suits of a civil nature—

when the amount or value of the subject-matter does not exceed two thousand rupees: and

(a) the cause of action has arisen, either wholly or in part, within the local limits of the jurisdiction of the Small Cause Court, and the leave of the Court has, for reasons to be recorded by it in writing, been given before the institution of the suit; or

(b) all the defendants, at the time of the institution of the suit, actually and voluntarily reside, or carry on business, or personally work for gain within such local limits; or

(c) any of the defendants, at the time of the institution of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, within such local limits: and either the leave of the Court has been given before the institution of the suit, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution.

*Explanation I.*—When in any suit the sum claimed is, by a set-off admitted by both parties, reduced to a balance not exceeding two thousand rupees, the Small Cause Court shall have jurisdiction to try such suit.

*Explanation II.*—Where a person has a permanent dwelling at one place and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.

*Explanation III.*—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

19. The Small Cause Court shall have no jurisdiction in—

(a) suits concerning the assessment or collection of the revenue;

(b) suits concerning any act ordered or done by the Governor General in Council or the Local Government, or by the Governor General or a Governor, or by any Member of the Council of the Governor General or of the Governor of Madras or Bombay, in his official capacity, or by any person by order of the Governor General in Council or the Local Government;

(c) suits concerning any act ordered or done by any Judge or judicial officer in the execution of his office, or by any person in pursuance of any judgment or order of any Court or any such Judge or judicial officer;

(d) suits for the recovery of immoveable property;

(e) suits for the partition of immoveable property;

(f) suits for the foreclosure or redemption of a mortgage of immoveable property;

(g) suits for the determination of any other right to or interest in immoveable property;

(h) suits for the specific performance or rescission of contracts;

(i) suits to obtain an injunction;

(j) suits for the cancellation or rectification of instruments;

(k) suits to enforce a trust;

(l) suits relating to general average and to insurances on sea-going vessels;

(m) suits for compensation in respect of collisions at sea;

(n) suits for compensation for the infringement of a patent, copy-right or trade-mark;

(o) suits for a dissolution of partnership or for an account of partnership-transactions;

(p) suits for an account of property and its due administration under the decree of the Court;

(q) suits for compensation for libel, slander, malicious prosecution, adultery or breach of promise of marriage;

(r) suits for the restitution of conjugal rights, for the recovery of a wife, or for a divorce;

(s) suits for declaratory decrees;

(t) suits in which the plaintiff's claim depends on the decision of a question as to religious rites or ceremonies;

(u) suits for possession of a hereditary office;

(v) suits against Sovereign Princes or Ruling Chiefs, or against Ambassadors or Envoys of Foreign States;

(w) suits on any judgment of a High Court;

(x) suits the cognizance whereof by the Small Cause Court is barred by any law for the time being in force.

20. When the parties to a suit which, if the amount or value of the subject-matter thereof did not exceed two thousand rupees, would be cognizable by the

Small Cause Court, have entered into an agreement in writing that the Small Cause Court shall have jurisdiction to try such suit, the Court shall have jurisdiction to try the same, although the amount or value of the subject-matter thereof may exceed two thousand rupees.

Every such agreement shall be filed in the Small Cause Court, and, when so filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by its decision in such suit.

21. All suits to which an officer of the Small Cause Court is, as such, a party, except suits in respect of property taken in execution of its process, or the proceeds or value thereof, may be instituted in the High Court at the election of the plaintiff as if this Act had not been passed.

Suits by and against officers of Court.

22. If any suit cognizable by the Small Cause Court, other than a suit to which in section twenty-one applies, is instituted in the High Court, and if in such

suit the plaintiff obtains, in the case of a suit founded on contract, a decree for any matter of an amount or value less than two thousand rupees, and in the case of any other suit a decree for any matter of an amount or value of less than three hundred rupees, no costs shall be allowed to the plaintiff;

IX of  
50, ss. 25  
32:  
Act X of  
77, s. 11.  
& 20 Vic.,  
106, s. 24.

Act of 1865,  
12.

IX of  
1865,  
12.

Bom. H.  
1865,  
12.

IX of  
1865,  
12.

19 & 20 Vic.,  
c. 108, s. 27.

Act XXVI of  
1864, s. 3.

Act IX of  
1850, s. 100.

Act IX of  
1850, s. 101.  
Act XXVI of  
1864, s. 9.



and if in any such suit the plaintiff does not obtain a decree, the defendant shall be entitled to his costs as between attorney and client.

The foregoing rules shall not apply to any suit in which the Judge who tries the same certifies that it was one fit to be brought in the High Court.

#### CHAPTER V.

##### PROCEDURE IN SUITS.

23. The chapters and sections of the Code of Civil Procedure specified in the second schedule hereto annexed shall extend, and shall, so far as the same may, in the judgment of the Court, be applicable, be applied, to the Small Cause Court; and the procedure prescribed thereby shall be the procedure followed in the Court in all suits cognizable by it, except where such procedure is inconsistent with the procedure prescribed by any specific provisions of this Act.

New.

24. Notwithstanding anything contained in section 13 of the Code of Civil Procedure, no decision passed under the provisions of this Act shall be conclusive as to anything except the right at the time of such decision to the relief granted thereby, or the absence of a right at such time to any relief claimed by the plaintiff and withheld by such decision.

##### Illustrations.

(a). A sues B in the Small Cause Court for compensation for damage done by B to a house which A alleges to be his own. B denies that the house is A's. The Court decides that the house is A's, and that he is entitled to Rs. 100 compensation. The decision is conclusive as to A's right to the compensation, but not as to his title to the house, and, if A subsequently sues B for further damage done to the same house, B is not precluded from again questioning A's title.

(b). A sues B in the Small Cause Court for an instalment alleged to be due on a bond purporting to be executed by B. B denies the execution of the bond. The Court finds the execution proved, and gives A a decree for the amount of the instalment. A subsequently sues B for a later instalment on the same bond; B is not precluded from again denying the execution.

(c). A sues B as in illustration (b). B denies the execution of the bond, and the Court, finding that B's signature was forged, dismisses the suit. This does not preclude A from suing again on the bond.

(d). A sues B in the Small Cause Court for possession of a horse which A alleges to be his property, and to have been lent to B to use during A's pleasure. B denies that the horse is A's. The Court finds that the horse is A's, and gives him a decree for possession, and A recovers possession of the horse. B, subsequently alleging that the horse is his, sues A for possession of it. The decision in the former suit is no bar to B.

New.

25. Except in cases of set-off under the Code of Civil Procedure, section 111, no written statement shall be received unless required by the Court.

Act X of 1877, s. 144.

26. When a period of eight days from the decision of a suit has expired without any application for a new trial or re-hearing of such suit having been made, or when any such application has been made within such period and such application has been refused, or the new trial or re-hearing (as the case may be) has ended, any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record, shall, unless the document is impounded under section 143 of the Code of Civil Procedure, be entitled to receive back the same:

Provided that a document may be returned at any time before any of such events if the person applying for such return delivers to the proper officer a certified copy of such document to be substituted for the original. Provided also that no document shall be returned which by force of the decree has become void or useless.

On the return of a document which has been admitted in evidence, a receipt shall be given by the party receiving it, in a receipt-book to be kept for the purpose.

27. In any suit in which the defendant appears and does not admit the claim, and the plaintiff does not obtain a decree for the full amount of his claim, the Small Cause Court may in its discretion order the plaintiff to pay to the defendant, by way of satisfaction for his trouble and attendance, such sum as it thinks fit.

When any claim preferred, or objection made, under section 278 of the Code of Civil Procedure, is disallowed, the Small Cause Court may in its discretion order the person preferring or making such claim or objection to pay to the decree-holder, or to the judgment-debtor, or to both, by way of satisfaction as aforesaid, such sum or sums as it thinks fit.

Any order under this section may, in default of payment of the amount payable thereunder, be enforced by the person in whose favour it is made against the person against whom it is made as if it were a decree of the Court.

28. No application to execute a decree passed under this Act shall be received after the expiration of three years from the date of such decree, unless the judgment-debtor has, within the three years following such date, by force or fraud prevented the execution of such decree.

29. Whenever the Small Cause Court issues a warrant for the arrest of a judgment-debtor or the attachment of his property, the decree-holder, or some other person on his behalf, shall accompany the officer of the Court entrusted with the execution of such warrant, and shall point out to such officer the judgment-debtor or the property to be attached, as the case may be.

30. When the judgment-debtor under any decree of the Small Cause Court, is a tenant of immoveable property, anything attached to such property, and which he might before the termination of his tenancy lawfully remove without the permission of his landlord, shall, for the purpose of the execution of such decree, be deemed to be moveable property, and may, if sold in such execution, be severed by the purchaser, but shall not be removed by him from the property until he has done to the property whatever the judgment-debtor would have been bound to do to it if he had removed such thing.

31. Whenever any judgment-debtor, who has been arrested in execution of a decree of the Small Cause Court, offers security to the satisfaction of such Court for payment of

the amount which he has been ordered to pay and the costs, the Court may order him to be discharged.

Act IX of 1850, s. 71. See I.L.R. Cal., 294.)  
**32.** Whenever it appears to the Small Cause Court that any judgment-debtor under its decree is unable, from sickness or other sufficient cause, to pay the amount of the decree, or, if such Court has ordered the same to be paid in instalments, the amount of any instalment thereof, it may, from time to time, for such time and upon such terms as it thinks fit, suspend the execution of such decree.

Act XI of 1850, s. 20.  
**33.** If the judgment-debtor under any decree of the Small Cause Court has not, within the local limits of its jurisdiction, moveable property sufficient to satisfy the decree, the Court may, on the application of the decree-holder, send the decree for execution—

(a) in the case of execution against immoveable property situate within such local limits—to the High Court;

(b) in all other cases—to any Civil Court within the local limits of whose jurisdiction such judgment-debtor, or any moveable or immoveable property of such judgment-debtor, may be found.

The procedure prescribed by the Code of Civil Procedure for the execution of decrees by Courts other than those which made them shall be the procedure followed in such cases.

Act IX of 1850, s. 31.  
**34.** Notwithstanding anything contained in the Code of Civil Procedure as applied by this Act, any minor may institute a suit for any sum of money, not exceeding five hundred rupees, which may be due to him under section seventy of the Indian Contract Act, 1872, for wages or piece-work or for work as a servant, in the same manner as if he were of full age.

Act X of 1877, s. 637.  
**35.** Any non-judicial or quasi-judicial act which the Code of Civil Procedure as applied by this Act requires to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394 of that Code as so applied, may be done by the Registrar of the Small Cause Court or by such other officer of that Court as that Court may, from time to time, appoint in this behalf.

The High Court may, from time to time, by rule declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.

**36.** The suits cognizable by the Registrar under section fourteen shall be heard and determined by him in like manner in all respects as a Judge of the Court might hear and determine the same:

Provided that, subject to the orders of the Chief Judge, any Judge of the Court may, whenever he thinks fit, transfer to his own file any suit on the file of the Registrar.

**37.** The Registrar may receive applications for the execution of decrees of any value passed by the Court, and may commit and

discharge judgment-debtors, and make any order in respect thereof which a Judge of the Court might make under this Act.

**38.** Every decree and order made by the Registrar in any suit or proceeding shall be subject to the same provisions in regard to new trial as if made by a Judge of the Court.

## CHAPTER VI.

### NEW TRIALS AND REHEARING.

**39.** Save as is herein specially provided, every decree and order of the Small Cause Court in a suit shall be final and conclusive; (Cf. Act XI of 1865, s. 21.)  
 but the Court may, on application of either party, made within eight days from the date of the decree or order in any suit (not being a decree passed under section 522 of the Code of Civil Procedure) order a new trial to be held upon such terms as it thinks reasonable, and may, in the meantime, stay the proceedings.

Judgments and orders of Court final.  
 Power to order new trial in Small Cause Court.  
 Application for rehearing in High Court.

**40.** Any party may, within eight days after the judgment in any suit in which the amount or value of the subject-matter exceeds five hundred rupees, apply to the High Court for an order that such suit may be re-heard.

Such application shall be supported by affidavits, and, in case the applicant has appeared by advocate, vakil or attorney, by a certificate from the leading Counsel at the hearing that in his opinion there are good grounds for re-hearing the suit, and, if on hearing such application, the High Court is of opinion that there has been a miscarriage or failure of justice, or that there are other good grounds for such re-hearing, the Court shall make an order *ex parte*, on such terms as it thinks fit, for such re-hearing and fix a day for the same, whereof notice shall be given to the opposite party.

The rules contained in sections 545, 546 and 547 of the Code of Civil Procedure relating to staying and executing decrees under appeal, shall apply in the case of applications under this section as if such applications were appeals from the decisions of the Small Cause Court.

**41.** On the day fixed under section forty or on any other day to which the hearing may be adjourned, the High Court, or some Judge thereof, shall proceed to hear and determine the case as if the same were a suit brought in such High Court in its ordinary original civil jurisdiction, in which the plaintiff in the Small Cause Court was plaintiff, and the defendant in such Court was defendant, and in which written statements had not been ordered to be filed; and, except as herein otherwise provided, all the practice and procedure of such High Court in respect of suits brought in its ordinary original civil jurisdiction, shall be followed in suits re-heard under this section: Provided that there shall not be any appeal from any judgment, decree, or order under this section.

Procedure at re-hearing.  
 Judge thereof, shall proceed to hear and determine the case as if the same were a suit brought in such High Court in its ordinary original civil jurisdiction, in which the plaintiff in the Small Cause Court was plaintiff, and the defendant in such Court was defendant, and in which written statements had not been ordered to be filed; and, except as herein otherwise provided, all the practice and procedure of such High Court in respect of suits brought in its ordinary original civil jurisdiction, shall be followed in suits re-heard under this section: Provided that there shall not be any appeal from any judgment, decree, or order under this section.

**42.** Every decree or order made by any High Court upon any such rehearing may either be executed by such High Court in the same manner as other

Execution of decrees of High Court.



decrees or orders of such Court or may, in the discretion of the High Court, be remitted to the Small Cause Court for execution.

## CHAPTER VII.

### RECOVERY OF POSSESSION OF IMMOVEABLE PROPERTY.

Act IX of  
1850, s. 91.  
19 & 20 Vic.,  
c. 108, s. 50.

**43.** When any person has had possession of any immoveable property situate within the local limits of the Small Cause Court's jurisdiction and of which the annual value at a rack-rent does not exceed one thousand rupees, as the tenant, or by permission of, another person, or of some person through whom such other person claims,

and such tenancy or permission has been determined or been withdrawn,

and such tenant or occupier or any person holding under or by assignment from him, (hereinafter called the occupant) refuses to deliver up such property in compliance with a request made to him in this behalf by such other person,

such other person (hereinafter called the applicant) may apply to the Small Cause Court for a summons against the occupant, calling upon him to show cause, on a day therein appointed, why he should not be compelled to deliver up the property.

Act IX of  
1850, s. 94.

**44.** The summons shall be served on the occupant in the manner provided by the Code of Civil Procedure for the service of a summons on a defendant.

Act IX of  
1850, ss. 92,  
93.  
19 & 20 Vic.,  
c. 108, s. 50.

**45.** If the occupant does not appear at the time appointed and show cause to the contrary, the applicant shall, if the Small Cause Court is satisfied that he is entitled to apply under section forty-three, be entitled to an order addressed to a bailiff of the Court directing him to give possession of the property to the applicant on such day as the Court thinks fit to name in such order.

*Explanation.*—If the occupant proves that the tenancy was created or permission granted by virtue of a title which determined previous to the date of the application, he shall be deemed to have shown cause within the meaning of this section.

Act IX of  
1850, s. 93.

**46.** Any such order shall justify the bailiff to whom it is addressed in entering after the hour of six in the morning and before the hour of six in the afternoon upon the property named therein, with such assistants as he thinks necessary, and giving possession of such property to the applicant: and no suit or prosecution shall be maintainable against any Judge or officer of the Small Cause Court by whom any such order as aforesaid

Act IX of  
1850, s. 95.

was issued, or against any bailiff or other person by whom the same was executed, or by whom any such summons as aforesaid was served, for the issue, execution or service of any such order or summons, by reason only that the applicant was not entitled to the possession of the property.

**47.** When the applicant, at the time of applying for any such order as aforesaid, was entitled to the possession of such property, neither he nor any person acting in his behalf shall be deemed, on account of any error, defect or irregularity in the mode of proceeding to obtain possession thereunder, to be a trespasser; but any person aggrieved may bring a suit for the recovery of compensation for any damage which he has sustained by reason of such error, defect or irregularity:

Applicant, if entitled to possession, not to be deemed trespasser for any error in proceedings.

Occupant may sue for compensation.

when no such damage is proved, the suit shall be dismissed; and when such damage is proved but the amount of the compensation assessed by the Court does not exceed ten rupees, the Court shall award to the plaintiff no more costs than compensation, unless the Judge who tries the case certifies that in his opinion full costs should be awarded to the plaintiff.

**48.** Nothing herein contained shall be deemed to protect any applicant obtaining possession of any property under this chapter from a suit by any person deeming himself aggrieved thereby, when such applicant was not at the time of applying for such order as aforesaid entitled to the possession of such property.

And when the applicant was not, at the time of applying for any such order as aforesaid, entitled to the possession of such property, the application for such order, though no possession is taken thereunder, shall be deemed to be an act of trespass committed by the applicant against the occupant.

**49.** Whenever on an application being made under section forty-three the occupant binds himself, with two sureties, in a bond for such amount as the Small Cause Court thinks reasonable, having regard to the value of the property and the probable costs of the suit next hereinafter mentioned, to institute without delay a suit in the High Court against the applicant for compensation for trespass, and to pay all the costs of such suit in case he does not prosecute the same or in case judgment therein is given for the applicant, the Small Cause Court shall stay the proceedings on such application until such suit is disposed of.

If the occupant obtains a decree in any such suit against the applicant, such decree shall supersede the order (if any) made under section forty-five.

Nothing contained in section twenty-two shall apply to suits under this section.

**50.** In all proceedings under this chapter, the Small Cause Court shall, as far as may be and except as herein otherwise provided, follow the procedure prescribed for a Court of first instance by the Code of Civil Procedure.

**51.** Recovery of the possession of any immoveable property under this chapter shall be no bar to the institution of a suit in the High Court for trying the title thereto.

Recovery of possession no bar to suit to try title.

Act IX  
1850, s. 96

Act IX  
1850, s. 93

Act IX  
1850, s. 97

Act IX  
1850, s. 97

New.

Act IX of  
1850, s. 98

## CHAPTER VIII.

## REFERENCES TO HIGH COURT.

52. If two or more Judges of the Small Cause Court sit together in any suit, or in any proceeding under chapter VII of this Act, and differ in their opinion as to any question of law or usage having the force of law, or the construction of a document, which construction may affect the merits,

or if in any suit or any such proceeding, in which the amount or value of the subject-matter exceeds five hundred rupees, any such question arises, and either party so requires, the Small Cause Court shall draw up a statement of the facts of the case, and refer such statement, under section 617 of the Code of Civil Procedure, for the opinion of the High Court, and shall either reserve judgment or give judgment contingent upon such opinion.

53. When judgment is given under section fifty-two contingent upon the opinion of the High Court, the party against whom such judgment is given shall at once furnish security, to be approved by the Small Cause Court, for the costs of the reference to the High Court and for the amount of such judgment:

Provided that no security for the amount of such judgment shall be required in any case in which the Judge who tried the case has ordered such amount to be paid into Court, and the same has been paid accordingly.

Unless such security as aforesaid is at once furnished, the party against whom such contingent judgment has been given shall be deemed to have submitted to the same.

## CHAPTER IX.

## FEES AND COSTS.

## Institution-fee.

54. A fee not exceeding—  
(a) when the amount or value of the subject-matter does not exceed five hundred rupees—the sum of two annas in the rupee on such amount or value,

(b) when the amount or value of the subject-matter exceeds five hundred rupees—the sum of sixty-two rupees eight annas, and one anna in the rupee on the excess of such amount or value, over five hundred rupees,

shall be paid on the plaint in every suit, and every application under section forty or section forty-three; and no such plaint or application shall be received until such fee has been paid.

A fee of ten rupees shall be paid on the filing of every agreement under chapter XXXVIII of the Code of Civil Procedure.

55. The fees specified in the third and fourth columns of the third Schedule hereto annexed shall be paid previous to the issue in any suit or in any proceeding under chapter VII of this Act of the processes, to which the said columns respectively relate, by the persons on whose behalf such processes are issued, when the amount or value of the subject-matter exceeds the sum specified in the first column, but does not exceed the sum specified in the second column of the said Schedule.

56. Whenever any such suit or proceeding is settled by agreement of the parties before the hearing, half the amount of all fees paid up to that time shall be repaid by the Small Cause Court to the parties by whom the same have been respectively paid.

57. The Small Cause Court may, whenever it thinks fit, receive and register suits instituted, and applications under section forty-three made, by poor persons, and may issue processes on behalf of such persons, without payment of the fees mentioned in sections fifty-four and fifty-five, or on a part-payment of such fees.

58. The Local Government may, from time to time, by notification in the official Gazette, vary the amount of the fees payable under sections fifty-four and fifty-five: Provided that the amount of such fees shall in no case exceed the amount prescribed by the said sections.

59. The expense of employing an advocate, vakil, attorney or other legal practitioner incurred by any party shall not be allowed as costs in any suit or in any proceeding under chapter VII of this Act, in the Small Cause Court, in which the amount or value of the subject-matter does not exceed twenty rupees, unless the Court is of opinion that the employment of such practitioner was under the circumstances reasonable.

60. Nothing contained in this chapter shall affect the provisions of sections 3, 5 and 25 of the Court Fees Act, 1870, sections 3, 5 and 25 of the Court Fees Act, 1870.

## CHAPTER X.

## MISCONDUCT OF INFERIOR MINISTERIAL OFFICERS.

61. The Chief Judge may, by order, fine, in an amount not exceeding one month's salary, any clerk, bailiff or other inferior ministerial officer of the Court who is guilty of misconduct or neglect in the performance of the duties of his office, and such fine may be deducted from his salary.

62. If any clerk, bailiff or other inferior ministerial officer of the Small Cause Court who is employed as such in the execution of any order or warrant, loses, by neglect, connivance or omission, an opportunity of executing such order or warrant, he shall be liable, by order of the Chief Judge, on the application of the person injured by such neglect, connivance or omission, to pay such sum, not exceeding in any case the sum for which the said order or warrant was issued, as, in the opinion of the Chief Judge, represents the amount of the damage sustained by such person thereby.

63. If any clerk, bailiff or other inferior ministerial officer of the Small Cause Court is charged with extortion or default while acting under colour of its process, or with not duly paying or accounting for any money levied by him



under its authority, the Court may inquire into such charge, and may make such order for the repayment or payment of any money so extorted, or of any money so levied as aforesaid, and of damages and costs, by such officer, as it thinks fit.

64. For the purposes of any inquiry under this chapter, the Small Cause Court shall have all the powers of summoning and enforcing the attendance of witnesses and compelling the production of documents which it possesses in suits under this Act.

65. Any order under this chapter for the payment or repayment of money may, in default of payment of the amount payable thereunder, be enforced by the person to whom such amount is payable as if the same were a decree of the Small Cause Court in his favour.

## CHAPTER XI.

### CONTEMPT OF COURT.

66. When any such offence as is described in section 175, 178, 179, 180 or 228 of the Indian Penal Code is committed in the view or presence of the Small Cause Court, the Court may cause the offender to be detained in custody; and, at any time before the rising of the Court on the same day, may, if it thinks fit, take cognizance of the offence, and sentence the offender to fine not exceeding two hundred rupees, and in default of payment to imprisonment in the civil Jail for a term which may extend to one month unless such fine is sooner paid.

67. In every such case the Court shall record the facts constituting the offence, the statement (if any) made by the offender, and the finding and sentence.

If the offence is under section 228 of the Indian Penal Code, the record must show the nature and stage of the judicial proceeding in which the Court when interrupted or insulted was sitting, and the nature of the interruption or insult offered.

68. If the Court considers that a person accused of any offence referred to in section sixty-six and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or if the Court is for any other reason of opinion that the case should not be disposed of under section sixty-six, the Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Presidency Magistrate, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, may forward him under custody to such Magistrate.

Such Magistrate shall deal with the accused person in the manner provided by the Presidency Magistrates Act, 1877; and may sentence the offender to punishment as provided in the section of the Indian Penal Code under which he is charged.

69. When the Court has, under section sixty-six or section sixty-eight, sentenced an offender to punishment, or forwarded him to a Presidency Magistrate for trial, for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may in its discretion discharge the offender, or remit the punishment on his submission to the order or requisition of the Court, or on apology being made to its satisfaction.

70. If any witness before the Small Cause Court refuses to answer such questions as are put to him, or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, the Court may sentence him to simple imprisonment, or commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to answer or to produce such document, as the case may be, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of section sixty-six or sixty-eight.

71. Any person deeming himself aggrieved by an order under section sixty-six or section seventy may appeal to the High Court, and the provisions of the Presidency Magistrates Act, 1877, relating to appeals shall, so far as may be, apply to appeals under this section.

## CHAPTER XII.

### MISCELLANEOUS.

72. No person other than an advocate, vakil or attorney of the High Court, or a person who is at the time this Act comes into force a pleader of the Small Cause Court, shall appear, plead or act in any suit or proceeding in the Small Cause Court under this Act, and

no person other than—

(a) an advocate of the High Court instructed by a vakil or attorney of such Court or by a pleader of the Small Cause Court, or

(b) a vakil of the High Court, shall address the Court or examine witnesses at the hearing of any such suit in which the amount or value of the subject-matter exceeds one thousand rupees.

Nothing in this section shall affect the right of any party to conduct his own case or that of any other party to the suit, or the right of any recognized agent of a party under the Code of Civil Procedure as applied by this Act.

73. Notices to produce documents, summonses to witnesses, and all other processes issued in the exercise of any jurisdiction conferred on the Small Cause Court by this Act, except summonses to defendants and writs of execution, may, if the Court by general or special order so directs, be served by such persons as the Court, from time to time, appoints in this behalf.

74. The Small Cause Court shall keep such registers, books and accounts, and submit to the High Court such statements and returns, as may,

Act IX of 1850, s. 85.

Act X of 1872, s. 435.  
Act IV of 1877, s. 205.  
Cf. also draft Code of Criminal Procedure, s. 480.

Act X of 1872, s. 436.  
Act IV of 1877, s. 206.  
Cf. draft Code of Criminal Procedure, s. 483.

Act X of 1872, s. 437.  
Act IV of 1877, s. 207.  
Cf. draft Code of Criminal Procedure, s. 484.

Act X of 1872, s. 356-364.  
Act X of 1877, s. 89.  
Act IV of 1877, s. 141.  
Cf. draft Code of Criminal Procedure, s. 485.  
(Also see Act IX of 1850, s. 49.)

Draft Code of Criminal Procedure, s. 287.

Act X of 1872, s. 633.

Act X of 1872, s. 187.

subject to the approval of the Local Government, be prescribed by the High Court.

75. The Small Cause Court shall comply with such requisitions as may from time to time be made by the Local Government or High Court for records, returns and statements in such form and manner as such Government or Court, as the case may be, thinks fit.

76. The Small Cause Court shall, at the commencement of each year, draw up a list of holidays and vacations to be observed in the Court, and shall submit the same for the approval of the Local Government.

Such list, when it has received such approval, shall be published in the local official Gazette, and the said holidays and vacations shall be observed accordingly.

77. The Governor General and Members of his Council, the Governors of Fort St. George and Bombay and the members of their respective Councils, the Lieutenant-Governor of Bengal, and the Chief Justices and Judges of the High Courts established under the 24th & 25th of Victoria, chapter 104, shall not be liable to arrest by order of the Small Cause Court.

78. No suit shall lie on any decree of the Small Cause Court.

79. Any person ordered by the Small Cause Court to be imprisoned may be imprisoned in such place as the Local Government, from time to time, appoints in this behalf.

80. If any person against whom any suit is brought for anything purporting to be done by him under this Act, has, before the institution of the suit, tendered sufficient amends to the plaintiff, the plaintiff shall not recover.

81. All prosecutions for anything purporting to be done under this Act must be commenced within three months after the offence is committed.

### THE FIRST SCHEDULE.

(See section 2.)

#### ENACTMENTS REPEALED.

##### A.—Charters of the Supreme Courts.

Date.		Extent of repeal.
26th March, 1774	Charter of the Supreme Court at Fort William.	Clause 21.
26th December, 1800.	Charter of the Supreme Court at Madras.	Clause 47.
8th December, 1823.	Charter of the Supreme Court at Bombay.	Clause 59.

### THE FIRST SCHEDULE—*contd.* B.—Acts of the Governor General in Council.

Number and year.	Subject or short title.	Extent of repeal.
IX of 1850 ...	For the more easy recovery of small debts and demands in Calcutta, Madras and Bombay.	So much as has not been repealed.
XX of 1857 ...	To amend Act IX of 1850.	The whole.
XXVI of 1864	To extend the jurisdiction of the Courts of Small Causes at Calcutta, Madras and Bombay, and to provide for the appointment of an increased number of Judges of these Courts.	So much as has not been repealed.
X of 1877 ...	The Code of Civil Procedure.	Section eight, para. 2.

### C.—Act of the Governor of Bombay in Council.

Number and year.	Subject.	Extent of repeal.
VI of 1864 ...	For the better regulation of the diet-money of persons imprisoned by the Bombay Court of Small Causes.	So much as has not been repealed.

### THE SECOND SCHEDULE.

(See section 23.)

#### PORTIONS OF CIVIL PROCEDURE CODE EXTENDING TO COURT.

PRELIMINARY: Section 2, Interpretation-clause.

CHAPTER I.—Of the Jurisdiction of the Courts and *Res Judicata*, except section 11.

CHAPTER II.—Of the Place of suing, except sections 15 to 19 (both inclusive), section 20, paragraph 4, sections 22, 23 and 24 and section 25, paragraphs 2 and 3.

CHAPTER III.—Of Parties and their Appearances Applications and Acts, except section 37, clause (b) and the last paragraph.

CHAPTER IV.—Of the Frame of the Suit, except section 42 and section 44, rule a.

CHAPTER V.—Of the Institution of Suits, except section 53, clause (e), section 55, section 57, clause (b), and sections 58 and 62.

CHAPTER VI.—Of the Issue and Service of Summons, except, in section 64, the words "and the copies or concise statements required by section 58 have been filed," and sections 65, 66 and 86.

CHAPTER VII.—Of the Appearance of the Parties and Consequence of Non-appearance.



THE SECOND SCHEDULE—*contd.*

- CHAPTER VIII.—Of Written Statements and Set-off, except sections 110, 112 and 113.
- CHAPTER IX.—Of the Examination of the Parties by the Court, except section 119.
- CHAPTER X.—Of Discovery and the Admission, &c., of Documents, sections 128 to 133 (both inclusive), section 135, section 136 (except so far as it relates to interrogatories), section 137 (except the second clause), section 138, section 139 (except the last sentence), section 140 (except the proviso and the last six words), sections 141, 142, 143 and 145.
- CHAPTER XI.—Settlement of issues, sections 150 and 151.
- CHAPTER XII.—Disposal of the Suit at the first hearing, except sections 154 and 155.
- CHAPTER XIII.—Of Adjournments.
- CHAPTER XIV.—Of the Summoning and Attendance of Witnesses, except sections 168, 169, 170 and 175.
- CHAPTER XV.—Of the Hearing of the Suit and Examination of Witnesses, except sections 182 to 191 (both inclusive).
- CHAPTER XVI.—Of Affidavits.
- CHAPTER XVII.—Of Judgment\* and Decree, except sections 200, 201, 202, 204, 207, and 211 to 215 (both inclusive).
- CHAPTER XVIII.—Of Costs.
- CHAPTER XIX.—Of the Execution of Decrees, section 230, first two clauses, sections 231 to 236 (both inclusive), 243 to 259 (both inclusive), 266 (so far as relates to the attachment of moveable property or decrees therefor), 267 to 272 (both inclusive), 273 (so far as relates to decrees for moveable property), 275 to 303

THE SECOND SCHEDULE—*concl'd.*

- (both inclusive), 328 to 333 (both inclusive), 336 (except the last three clauses), and 337 to 343 (both inclusive).
- CHAPTER XXI.—Of the Death, Marriage and Insolvency of Parties.
- CHAPTER XXII.—Of the Withdrawal and Adjustment of Suits.
- CHAPTER XXIII.—Of Payment into Court.
- CHAPTER XXIV.—Of Requiring Security for Costs.
- CHAPTER XXV.—Of Commissions, except section 396.
- CHAPTER XXVII.—Suits by or against Government, or public officers.
- CHAPTER XXVIII.—Suits by Aliens and by and against Foreign and Native Rulers, except section 433.
- CHAPTER XXIX.—Suits by and against Corporations and Companies.
- CHAPTER XXX.—Suits by and against Trustees, Executors and Administrators.
- CHAPTER XXXI.—Suits by and against Minors and Persons of Unsound Mind.
- CHAPTER XXXII.—Suits by and against Military Men.
- CHAPTER XXXIII.—Interpleader.
- CHAPTER XXXIV.—Of Arrest and Attachment before Judgment, except as regards the attachment of immoveable property.
- CHAPTER XXXV.—Interlocutory orders, sections 498, 499, 500 and 502.
- CHAPTER XXXVI.—Appointment of Receivers, section 503.
- CHAPTER XXXVII.—Reference to Arbitration, except the provisions of section 522 as to appeals.
- CHAPTER XXXVIII.—Of Proceedings on Agreement of Parties, except so much of section 527, clause (b), as relates to immoveable property.
- CHAPTER XLVI.—Of Reference to and Revision by High Court.
- CHAPTER XLIX.—Miscellaneous, sections 640 to 651 (both inclusive).

## THE THIRD SCHEDULE.

(See Section 55.)

## FEES FOR SUMMONSES AND OTHER PROCESSES.

When the amount or value of the subject-matter exceeds	But does not exceed	Fee for summons.			Fee for other processes.		
Rs.	Rs.	Rs.	A.	P.	Rs.	A.	P.
0	10	0	2	0	0	2	0
10	20	0	4	0	0	4	0
20	50	0	8	0	0	8	0
50	100	1	0	0	1	0	0
100	200	1	4	0	2	0	0
200	300	1	8	0	3	0	0
300	400	1	12	0	4	0	0
400	500	2	0	0	5	0	0
500	600	2	4	0	6	0	0
600	700	2	8	0	7	0	0
700	800	2	12	0	8	0	0
800	900	3	0	0	9	0	0
900	1,000	3	4	0	10	0	0
1,000	1,100	3	6	0	10	8	0
1,100	1,200	3	8	0	11	0	0
1,200	1,300	3	10	0	11	8	0
1,300	1,400	3	12	0	12	0	0
1,400	1,500	3	14	0	12	8	0
1,500	1,600	4	0	0	13	0	0
1,600	1,700	4	2	0	13	8	0
1,700	1,800	4	4	0	14	0	0
1,800	1,900	4	6	0	14	8	0
1,900	2,000	4	8	0	15	0	0

D. FITZPATRICK,  
Secretary to the Government of India.

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following third Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 11th March, 1881:—

WE, the undersigned Members of the Select Committee to which the Bill to define and amend the law relating to the Transfer of Property was referred, have the honour to state that the Report of the Indian Law Commissioners, 1879, was duly communicated to us. We have carefully considered so much of it as relates to that Bill, as well as the papers specified in the annexed list; and, in compliance with the wish of the Secretary of State for India, as expressed in his despatch (Legislative) No. 37, dated 7th October, 1880, we have now the honour to present this our third Report.

We agree generally in the enlargement of the Bill effected by the Law Commissioners, and we shall in this Report refer to the Bill as settled by them, and published in the *Gazette of India* for the 17th and 24th January, 1880.

## CHAPTER I.—PRELIMINARY.

We have rendered the definition of “attached to the earth” inapplicable to objects which merely rest upon the earth. And we have amended the definition of “notice” by making it apply expressly to a case where a person wilfully abstains from a search in a register which he ought to have made.

## CHAPTER II.—TRANSFERS OF PROPERTY BY ACT OF PARTIES.

This chapter, after declaring what rights are inalienable and by what persons transfers may be made, proceeds to declare restrictions of the transfer of property called for in the interests of society. These restrictions are in substance identical with those contained in the Indian Succession Act, and rights and liabilities arising out of customs or personal laws are sufficiently saved by section 2, clause (a).

We have amended section 6 (as to what may be transferred) in these respects:—*First*, we have in the first clause substituted “Act” for “section.” The effect will be to place Hindús on the same footing as Europeans as regards the power to make settlements, on marriage or otherwise, on persons not in existence at the date of the transfer. Although, no doubt, it has been laid down that the general principle of the Hindú law is that a donee must be in existence at the time of the gift, such settlements are in accordance with Native usage.

*Secondly*, we have re-drawn clause (a) thus:—

“(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of the same nature, cannot be transferred: the chance of a Hindú heir succeeding to property in the possession of a Hindú female cannot be transferred to any one except the present or future owner or co-owner of the property affected thereby.”

*Thirdly*, we have made clause (c) run thus:—

“(c) An easement cannot be transferred apart from the dominant heritage.”

*Fourthly*, we have extended clause (e) to rights to sue for harm illegally caused to property.

We think that the power to transfer property to or for the benefit of women, so that they shall not be able, during their marriage, to transfer or charge the same should be confined, as it is now, to women not being Hindús, Muhammadans or Buddhists; and we have altered section 10 accordingly.

It cannot be denied that one school of Muhammadan law does, as stated in the books, Baillie, p. 571 permit a settlement on a person, his children and their offspring in perpetuity. But in practice this form of settlement is obsolete, and, if made, the Courts would now refuse to recognise it as valid. We think, therefore, that section 14, which prohibits this kind of perpetuity, may stand unaltered.

We have shortened and simplified the sections (33, 34) which deal respectively with conditions that a transferee shall perform an act at or before a specified time, and like conditions wherein no such time is specified.



We do not think that the proposition laid down in section 40, as to a Hindú's right to receive maintenance from the profits of immoveable property, can be said to be authoritatively settled, and there are good grounds for questioning it.

We have therefore re-drawn the first clause of section 40 thus :—

"40. Where a third person has a right to receive maintenance or a provision for advancement or marriage from the profits of immoveable property, and such property is transferred with the intention of defeating the right, such right may be enforced against a transferee with notice of such intention, or a gratuitous transferee of the property affected by the right, but not against a transferee for consideration and without notice of the right, nor against such property in his hands."

The remainder of section 40, though suggested by English cases, is, in our opinion, founded on general principles of equity applicable to India, and may, therefore, fitly be left unaltered in the Bill.

Section 41 has been amended so as to bring a benámídar clearly within its operation.

We have confined section 42 to cases of transfers for consideration by persons having authority to revoke the transfer.

To the section (44) dealing with transfer by one co-owner we have added a clause declaring that, when the transferee of a share of a dwelling-house belonging to an undivided family is a stranger, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.

We have confined section 53 to cases of fraudulent transfer. To provide, as it now does, for fraudulent forfeitures would involve a change in the law the consequences of which cannot easily be foreseen.

#### CHAPTER III.—SALES OF IMMOVEABLE PROPERTY.

We agree with Sir Henry Maine as to the desirability of rendering the system of transfer of immoveable property a system of public transfer; and we are inclined to go a little further in this direction than seemed good to the Law Commissioners. Thus, we think that in the case of a reversion or other intangible thing, though its value may be less than Rs. 100, the transfer should be made only by registered assurance; and we have altered section 54 accordingly.

As to the duties of the seller, we think that, except where the property is sold subject to incumbrances, he should be bound to discharge all incumbrances on the property existing at the date of the sale; that he should not be bound to deliver the title-deeds till the whole of the purchase-money has been paid. We also think that the Bill may reasonably declare, as it does, that, in the absence of a stipulation to the contrary, the seller shall be deemed to contract that the interest which he assumes to transfer subsists and that he has power to make the transfer; but where he sells in a fiduciary character, we would follow the present practice, and declare simply that he shall be deemed to contract that he has done no act whereby the property is incumbered, or he is hindered from transferring it. We have altered section 55, clauses (a) (7), (8), (9), accordingly.

The proposition laid down in clause (c) (1), that a purchaser is bound to disclose any fact unknown to the vendor which increases his interest in the property, *e. g.*, the actual or imminent death of a prior life-tenant, has been questioned by a high authority. It appears to us in exact accordance with the rule laid down in *Turner v. Harvey*, Jac. 169; *Ellard v. Lord Llandaff*, 1 Ball & B. 241; and (on the sale of a life-policy) *Jones v. Keene*, 2 Moo. & R. 348. We have, however, made a verbal amendment in this clause.

As to the duties of the buyer, we have struck out the clause requiring him to retransfer the property sold, where the ownership has passed before payment of the purchase-money and he fails to pay or tender it. In such case the seller's lien is, we think, sufficient.

As to the buyer's rights, we think that his lien as against the seller for purchase-money paid in anticipation should be available against all persons claiming under the seller with notice of the payment. We have altered the section accordingly.

Where two properties are subject to a common charge and one is sold, the buyer's right as against the seller to have the charge satisfied out of the other property does not depend on whether or not the buyer had notice of the charge. We have, therefore, struck out of section 56 the words relating to notice.

#### CHAPTER IV.—MORTGAGES.

We think that in the definition of simple mortgage the expression "makes it a collateral security" is likely to give rise to difficulties. We also think that a transaction may be a "mortgage by conditional sale" although accompanied by possession, and in the definition of usufructuary mortgage the words "or agrees to deliver" and "actual" seem unnecessary. We have therefore amended these definitions as follows :—

##### *Simple Mortgage.*

"Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money and agrees expressly or impliedly that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of what may be due to him on the mortgage, the transaction is called a simple mortgage and the mortgagee a simple mortgagee."

##### *Mortgage by Conditional Sale.*

"Where the mortgagor ostensibly sells the mortgaged property on condition that in default of payment of the mortgage-money on a certain date the sale shall become absolute, or





We have struck out the clause in section 121 (now 122) which is founded on the rule in the Succession Act as to bequests to attesting witnesses. It is, we think, inapplicable to a transaction *inter vivos*, where the donor can give evidence of his intention.

We have also struck out the section (120) which declares that the donor is not bound to warranty. It seems to the majority of us useless as denying what no one in this country would ever assert. Our colleague Mr. Stokes would retain it as precluding a doubt which may reasonably be felt by the Courts (see Burge II, 145).

We have made verbal and other unimportant amendments in sections 11, 25, 36, 37, 51, 59, 61, 64, 80, 81, 90, 91, 99, 101, 106, 126, 133.

The Bill as now settled seems to us a systematic and useful arrangement of the existing law. But we agree with the Law Commissioners that, when the body of substantive civil law enacted for India is recast in a more compact and convenient form than that of a series of fragmentary portions from time to time passed by the legislature the chapters on Sale, Mortgage, Lease and Exchange contained in the present Bill will probably be placed in close connection with the rules contained in the Contract Act. Till then they may fitly be left in a law containing what the Contract Act does not contain, namely, general rules regulating the transmission of property between living persons.

We do not think that these rules, as now amended, will substantially alter or add to the existing law, or that they will invade or displace the functions of the Judges of the existing Courts. We, therefore, recommend that the Bill be passed. Drawn originally in England by the former Indian Law Commissioners, it was revised by Sir A. Hobhouse and introduced into the Council of the Governor General in June, 1877. It has since been twice circulated to the Local Governments for opinion and publication, and twice reported on by Select Committees, in February, 1878, and February, 1879. It was then carefully revised by the late Indian Law Commission. It has now been again revised by us. We think, therefore, of this Bill, as of the Bill dealing with negotiable instruments, that it is not now likely to be improved without the experience to be gained from its actual working. We recommend, however, that it should be republished in the *Gazette of India* with this Report; and, in obedience to the orders of the Secretary of State, it must also be sent home to him, published in the local Gazettes, and translated into the vernacular languages.

Our hon'ble colleagues Messrs. Grant and Paul have not been able to attend our meetings, and do not, therefore, sign this report.

WHITLEY STOKES.

J. PITT KENNEDY.

B. W. COLVIN.

JOTINDRA MOHAN TENDRE.

*The 11th March, 1881.*

#### LIST OF PAPERS.

- From Secretary to Government, North-Western Provinces and Oudh, to Secretary to Government of India, Department of Revenue, Agriculture and Commerce, No. 722A, dated 8th October, 1878, and enclosure [Papers No. 34].
- „ Acting Chief Secretary to Government, Madras, No. 467, dated 7th March 1879, and enclosures [Papers No. 35].
- „ Hon'ble H. S. Cunningham, dated 31st March, 1879 [Paper No. 36].
- „ Registrar, High Court, Calcutta, No. 494, dated 24th March, 1879 [Paper No. 37].
- „ Secretary for Birár to Resident, Haidarábád, No. 1, dated 8th April, 1879 [Paper No. 38].
- „ Hon'ble G. H. P. Evans, dated 11th April, 1879 [Paper No. 39].
- „ Officiating Secretary to Government, Bengal, No. 1947, dated 21st April, 1879, and enclosures [Papers No. 40].
- „ Acting Under Secretary to Government, Bombay, No. 2348, dated 18th April, 1879, and enclosures [Papers No. 41].
- „ Secretary to Government, Panjáb, No. 1705, dated 1st May, 1879, and enclosure [Papers No. 42].
- „ Secretary for Birár to Resident, Haidarábád, No. 4, dated 30th April, 1879, and enclosure [Papers No. 43].
- „ Officiating Secretary to Chief Commissioner, Mysore, No. 1086—3J, dated 5th May, 1879, and enclosures [Papers No. 44].
- „ Officiating Secretary to Chief Commissioner, Central Provinces, No. 2044—C, dated 9th May, 1879, and enclosures [Papers No. 45].
- „ Officiating First Assistant Resident, Haidarábád, No. 2P, dated 10th May, 1879, and enclosure [Paper No. 46].
- „ Secretary to Government, North-Western Provinces and Oudh, No. 2416, dated 10th May, 1879, and enclosures [Papers No. 47].
- „ Secretary to Government, North-Western Provinces and Oudh, No. 2416, dated 21st May, 1879, and enclosures [Papers No. 48].
- Memorandum by Pandit Lákhsmí Náráyana, Pleader, High Court, North-Western Provinces, dated 29th May, 1879 [Paper No. 49].





## SECTIONS.

43. Transfer by unauthorized person who subsequently acquires interest in property transferred.
44. Transfer by one co-owner.
45. Joint transfer for consideration.
46. Transfer for consideration by persons having distinct interests.
47. Transfer by co-owners of share in common property.
48. Priority of rights created by transfer.
49. Transferee's right under policy.
50. Rent *bona fide* paid to holder under defective title.
51. Improvements made by holder under defective title pending suit relating to title.
52. Fraudulent transfer.

## CHAPTER III.

## OF SALES OF IMMOVEABLE PROPERTY.

54. "Sale" defined.  
Sale how made.  
Contract for sale.
55. Rights and liabilities of buyer and seller.
56. Sale of one of two properties subject to a common charge.

## CHAPTER IV.

## OF MORTGAGES OF IMMOVEABLE PROPERTY AND CHARGES.

57. "Mortgage," "mortgagor" and "mortgagee" defined.  
Simple mortgage.  
Mortgage by conditional sale.  
Usufructuary mortgage.  
English mortgage.
58. Mortgage when to be by assurance.

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59. Right of mortgagor to redeem.  
Redemption of portion of mortgaged property.
60. Right to redeem one of two properties separately mortgaged.
61. Right of usufructuary mortgagor to recover possession.
62. Accession to mortgaged property.  
Accession acquired in virtue of transferred ownership.
63. Renewal of mortgaged lease.
64. Implied contracts by mortgagor.
65. Waste by mortgagor in possession.

*Rights and Liabilities of Mortgagee.*

66. Right to foreclosure or sale.
67. Right to sue for mortgage-money.
68. Power of sale when invalid.
69. Accession to mortgaged property.
70. Renewal of mortgaged lease.
71. Rights of mortgagee in possession.
72. Charge on proceeds of revenue-sale.
73. Right of subsequent mortgagee to pay off prior mortgagee.
74. Rights of mesne mortgagee against prior and subsequent mortgagees.
75. Liabilities of mortgagee in possession.  
Loss occasioned by his default.
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## SECTIONS.

*Priority.*

77. Postponement of prior mortgagee.
78. Mortgage to secure uncertain amount when maximum is expressed.
79. Tacking abolished.

*Marshalling and Contribution.*

80. Marshalling securities.
81. Contribution to mortgagee.

*Deposit in Court.*

82. Power to deposit in Court money due on mortgage.  
Right to money deposited by mortgagor.
83. Cessation of interest.

*Suits for Foreclosure, Sale or Redemption.*

84. Parties to suits for foreclosure, sale and redemption.

*Foreclosure and Sale.*

85. Decree in foreclosure-suit.
86. Procedure in case of payment of amount due.  
Order absolute for foreclosure.  
Power to enlarge time.
87. Decree for sale.  
Power to decree sale at instance of mortgagee.  
Power to decree sale in foreclosure-suit at instance of mortgagor.
88. Procedure when defendant pays amount due.  
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89. Recovery of balance due on mortgage.

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90. Who may sue for redemption.
91. Decree in redemption-suit.
92. In case of redemption, possession.  
In default, foreclosure or sale.  
Power to enlarge time.
93. Costs of mortgagee subsequent to decree.
94. Charge of one of several co-mortgagors who redeems.

*Sale of property subject to prior mortgage.*

95. Sale of property subject to prior mortgage.
96. Application of proceeds.

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97. Mortgage not described in section 56, clauses (b), (c), (d) and (e).  
Attachment of mortgaged property.
98. Attachment of mortgaged property.

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99. Charges.
100. Extinguishment of charges.

*Notice and Tender.*

101. Service or tender on or to agent.
102. Notice, &c., to or by person incompetent to contract.
103. Power to make rules.

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## OF LEASES OF IMMOVEABLE PROPERTY.

## SECTIONS.

104. Lease defined.  
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105. Duration of certain leases in absence of written contract or local usage.  
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106. Leases how made.
107. Rights and liabilities of lessor and lessee.
108. Rights of lessor's transferee.
109. Exclusion of day on which term commences.  
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110. Determination of lease.
111. Waiver of forfeiture.
112. Waiver of notice to quit.
113. Relief against forfeiture for non-payment of rent.
114. Effect of surrender and forfeiture on under-leases.
115. Effect of holding over.
116. Exemption of leases for agricultural purposes.

## CHAPTER VI.

## OF EXCHANGES.

117. "Exchange" defined.
118. Right of party evicted from thing received in exchange.
119. Rights and liabilities of parties.
120. Exchange of money.

## CHAPTER VII.

## OF GIFTS.

121. "Gift" defined.  
Acceptance when to be made.
122. Transfer how effected.
123. Gift of existing and future property.
124. Gift to several of whom one does not accept.
125. When gift may be suspended or revoked.
126. Onerous gifts.  
Onerous gift to disqualified person.
127. Universal donee.
128. Saving of donations *mortis causâ* and Muhammadan law.

## CHAPTER VIII.

## OF TRANSFERS OF ACTIONABLE CLAIMS.

129. Actionable claim.
130. Transfer of debts.
131. Notice to be in writing signed.
132. Debtor to give effect to transfer.
133. Warranty of solvency of debtor.
134. Discharge of person against whom claim is sold.
135. Incapacity of officers connected with Courts of justice.

## SECTIONS.

136. Liability of transferee of debt.
137. Mortgaged debt.
138. Saving of negotiable instruments.

## THE SCHEDULE.

## No. V.

*A Bill to amend the law relating to the Transfer of Property by act of Parties.*

WHEREAS it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties; It is hereby enacted as follows:—

## CHAPTER I.

## PRELIMINARY.

1. This Act may be called "The Transfer of Property Act, 1881":  
Short title. Property Act, 1881":  
Extent. It extends to the whole of British India;  
and it shall come into force on the first day of March, 1882.  
Commencement.
2. On and from that day the enactments specified in the schedule hereto annexed shall be repealed to the extent mentioned in the third column thereof. But nothing herein contained shall be deemed to affect—  
(a) the provisions of any enactment not hereby expressly repealed: Act IX of 1872, s. 1.  
Saving of certain enactments, incidents, rights, liabilities, &c. (b) any terms or incidents of any contract or constitution of property which are consistent with the provisions of this Act, and are allowed by the law for the time being in force:  
(c) any right or liability arising out of a custom or personal law consistent with this Act, or out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability:  
(d) any transfer by operation of law or by decree or order of a Court of competent jurisdiction. 1. L. R., 2 Bom. 541.
3. In this Act, unless there be something repugnant in the subject or context,—  
the "ownership" of a thing is the right of one "ownership": or more persons to possess and use it to the exclusion of others. Such ownership is either absolute or qualified. The thing of which there may be ownership is called "property":  
"assurance" means any non-testamentary instrument which purports or operates to create, transfer or otherwise dispose of, whether in present or in future, any right, title or interest to or in immoveable property: Act III of 1872, s. 1.



"registered" means registered in British India under the law for the time being in force regulating the registration of documents :  
 "registered":  
 "attached to the earth": "attached to the earth" means—

(a) rooted in the earth, as in the case of trees and shrubs;

See ss. 8, 107. (b) imbedded in the earth, as in the case of walls or buildings; or

(c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached:

See Contract Act, s. 229, as to agent: 4 Cal. 212: v. 11 Beng. 54 P. C.  
 and a person is said to have "notice" of a fact when he actually knows that fact, or when but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent under the circumstances mentioned in the Indian Contract Act, section 229.

Bill III, s. 4. 4. The chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872.  
 Enactments relating to contracts to be taken as part of Act IX of 1872.

## CHAPTER II.

### OF TRANSFERS OF PROPERTY BY ACT OF PARTIES.

(A).—*Transfer of Property, whether moveable or immoveable.*

5. In the following sections "transfer" means an act by which one living person conveys to another, or to himself and another, in present or in future, the ownership of property or an interest therein, and "to transfer" is to perform such act.

6. The ownership of property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force:—

Carlson v. Leighton, 3 Mer: Cf. Act X of 1877, s. 266, clause (k).  
 (a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred. The chance of a Hindú heir succeeding to property in the possession of a Hindú female cannot be transferred to any one except the present or future owner or co-owner of the property affected thereby.

Smith v. Packhurst, 3 Atk. 139.  
 (b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.

(c) An easement cannot be transferred apart from the dominant heritage.

(d) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

(e) A mere right to sue for compensation for a fraud or for harm illegally caused cannot be transferred.

(f) A public office cannot be transferred, nor can the salary of a public officer whether before or after it has become payable. Cf. 11 A. 13 Vic., c. 21, 27.

(g) Stipends allowed to military and civil pensioners of Government and political pensions cannot be transferred.

(h) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) for an illegal purpose, or (3) to a person legally disqualified to be transferee.

7. Every person competent to contract and entitled to transferable property, or authorized to dispose of transferable property not his own, is competent to transfer such property either wholly or in part and either absolutely or conditionally, in the circumstances, to the extent and in the manner allowed and prescribed by any law for the time being in force. Bill, s. 4- Bill III, Report, s. 1.

8. Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in such property, and in the legal incidents thereof. Bill, s. 10- Bill III, Report, s. 1. v. last clause Report, s. 1. 2 W. R. 12 (buildings) 14 W. R. 1.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth; N. W. P. 1870, p. 21 24 W. R. 1 (trees), "everything grown on."

and, where the property is machinery attached to the earth, the moveable parts thereof; Morley N. 259.

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows and all other things provided for permanent use therewith;

and, where the property is a debt or other actionable claim, the securities therefor, but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the ownership passes.

9. A transfer may be made without writing in every case in which a writing is not expressly required by law. 7 Exch. 581.

10. Where a transfer is subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property transferred, the condition or limitation is void except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him: provided that property may be transferred to or for the benefit of a woman (not being a Hindú, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein. Report, L. II, 30 D. 148.

of 1865, 11. Where on a transfer of property an interest is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

Nothing in this section shall be deemed to affect the right to restrain for the beneficial enjoyment of one piece of immoveable property, the enjoyment of another piece of such property, or to compel the enjoyment thereof in a particular manner.

s. 48: 12. Where property is transferred subject to a condition or limitation making any interest therein reserved or given to or for the benefit of any person

Condition making interest determinable on insolvency or attempted alienation. to cease on his becoming insolvent or endeavouring to transfer or dispose of the same, such condition or limitation is void.

Nothing in this section applies to a condition in a lease for the benefit of the lessor or those claiming under him.

of 1865, 13. Where on a transfer of property an interest is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.

#### Illustration.

A transfers property of which he is the owner to B in trust for A and his intended wife successively for their lives, and after the death of the survivor for the eldest son of the intended marriage for life, and after his death for his second son. The interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A's remaining interest in the property.

s. 50, 101. 14. No transfer can operate to create an interest which is to take effect after the life-time of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong.

s. 51: 15. If on a transfer of property an interest is created for the benefit of a class of persons with regard to some of whom such interest fails by reason of any of the rules contained in sections thirteen and fourteen, such interest fails as regards the whole class.

s. 52. 16. Where an interest fails by reason of any of the rules contained in sections thirteen, fourteen and fifteen, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

17. The restrictions in sections fourteen, fifteen and sixteen shall not apply to property transferred for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind.

18. Where the terms of a transfer of property direct that the income arising therefrom shall be accumulated, such direction shall be void, and the property shall be disposed of as if no accumulation had been directed. Act X of 1865, s. 104: Report, s. 53.

*Exception.*—Where the property is immoveable or where accumulation is directed to be made from the date of the transfer, the direction shall be valid in respect only of the income arising from the property within one year next following such date; and at the end of the year such property and income shall be disposed of respectively as if the period during which the accumulation has been directed to be made had elapsed. Donaldson v. Donaldson, L. R. 3 Chan. Div. 743.

19. Where, on a transfer of property, an interest is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect, forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer. Report, ss. 56, 57, altered.

A vested interest is not defeated by the death of the transferee before he obtains possession.

*Explanation.*—An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person, or whereby income arising from the property is directed to be accumulated until the time of enjoyment arrives, or from a provision that if a particular event shall happen the interest shall pass to another person.

20. Where, on a transfer of property, an interest is created for the benefit of a person not then living, he acquires upon his birth, unless a contrary intention appear from the terms of the transfer, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth. Report, s. 58, altered.

21. Where, on a transfer of property, an interest is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest, in the former case, on the happening of the event, in the latter, when the happening of the event becomes impossible. Act X of 1865, s. 107: Report, s. 59: IX, 72-33.

*Exception.*—Where under a transfer a person becomes entitled to an interest in property upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from



such interest before he reaches that age, or directs the income or so much thereof as may be necessary to be applied for his benefit, such interest is not contingent.

Act X of 1865,  
s. 108.

Report, s. 60.

22. Where, on a transfer of property, an interest is created in favour of such members only of a class as shall attain a particular age, such interest does not vest in any member of the class who has not attained that age.

Act X of 1865,  
s. 111.

Report, s. 61.

23. Where, on a transfer of property, an interest therein is to accrue to a specified person if a specified uncertain event shall happen, and no time is mentioned for the occurrence of that event, the interest fails unless such event happens before, or at the same time as, the intermediate or precedent interest ceases to exist.

Act X of 1865,  
s. 112.

24. Where, on a transfer of property, an interest therein is to accrue to such of certain persons as shall be surviving at some period, but the exact period is not specified, the interest shall go to such of them as shall be alive when the intermediate or precedent interest ceases to exist, unless a contrary intention appears from the terms of the transfer.

#### Illustration.

A transfers property to B for life, and after his death to C and D, equally to be divided between them, or to the survivor of them. C dies during the life of B. D survives B. At B's death the property passes to D.

Act X of 1865,  
s. 113.

Act X of 1865,  
s. 114, ex-

panded with

reference to

Act IX of

1872, s. 23.

25. An interest created on a transfer of property and dependent upon a condition fails if the fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to public policy.

#### Illustrations.

(a). A lets a farm to B on condition that he shall walk a hundred miles in an hour. The lease is void.

(b). A gives Rs. 500 to B on condition that he shall marry A's daughter, C. At the date of the transfer C was dead. The transfer is void.

(c). A transfers Rs. 500 to B on condition that she shall murder C. The transfer is void.

(d). A transfers Rs. 500 to his niece C if she will desert her husband. The transfer is void.

Act X of 1865,  
s. 115.

26. Where the terms of a transfer of property impose a condition to be fulfilled before a person can take an interest in the property, the condition shall be deemed to have been fulfilled if it has been substantially complied with.

#### Illustrations.

(a). A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. E dies. B marries with the consent of C and D. B has fulfilled the condition.

(b). A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. B marries without the consent of C, D and E, but obtains their consent after the marriage. B has not fulfilled the condition.

27. Where, on a transfer of property, an interest is created in favour of one person, and by the same transaction an ulterior disposition of the same interest is made in favour of another if the prior interest under the transfer shall fail, the ulterior disposition shall take effect upon the failure of the prior disposition, although the failure may not have occurred in the manner contemplated by the transferor.

Conditional transfer to one person coupled with transfer to another on failure of prior transfer.

is created in favour of one person, and by the same transaction an ulterior disposition of the same interest

is made in favour of another if the prior interest under the transfer shall fail, the ulterior disposition shall take effect upon the failure of the prior disposition, although the failure may not have occurred in the manner contemplated by the transferor.

But where the intention of the parties to the transaction is that the ulterior disposition shall take effect only in the event of the prior disposition failing in a particular manner, the ulterior disposition shall not take effect unless the prior disposition fails in that manner.

#### Illustrations.

(a). A transfers Rs. 500 to B on condition that he shall execute a certain lease within three months after A's death, and if he should neglect to do so, to C. B dies in A's life-time. The transfer to C takes effect.

(b). A transfers property to his wife; but in case she should die in his life-time, transfers to B that which he had transferred to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him. The transfer to B does not take effect.

28. On a transfer of property an interest may be created to accrue to any person with the condition superadded that in case a specified uncertain event shall happen, such interest shall pass to another person; or that in case a specified uncertain event shall not happen, such interest shall pass to another person. In each case the dispositions are subject to the rules contained in sections ten, twelve, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five and twenty-seven.

Ulterior transfer conditional on happening or not happening of specified event.

be created to accrue to any person with the condition superadded that in case a specified uncertain event

shall happen, such interest shall pass to another person; or that in case a specified uncertain event shall not happen, such interest shall pass to another person. In each case the dispositions are subject to the rules contained in sections ten, twelve, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five and twenty-seven.

29. An ulterior disposition of the kind contemplated by the last preceding section cannot take effect unless the condition is strictly fulfilled.

Fulfilment of condition subsequent.

plated by the last preceding section cannot take effect

unless the condition is strictly fulfilled.

#### Illustration.

A transfers Rs. 500 to B, to be paid to him on his attaining his majority or marrying, with a proviso that, if B dies a minor or marries without C's consent, the Rs. 500 shall go to D. B marries when only 17 years of age, without C's consent. The transfer to D takes effect.

Prior disposition not affected by invalidity of ulterior disposition.

30. If the ulterior disposition is not valid, the prior disposition is not affected by it.

#### Illustration.

A transfers a farm to B for her life, and, if she do not desert her husband, to C. B is entitled to the farm during her life as if no condition had been inserted.

31. Subject to the provisions of section twelve, on a transfer of property an interest may be created with the condition superadded that it shall cease to exist in case a specified uncertain

Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen.

on a transfer of property an interest may be created with the condition superadded that it shall cease to exist in case a specified uncertain





place the persons interested in the property professed to be transferred in the same condition as if such act had not been done.

#### Illustration.

A transfers to B an estate to which C is entitled, and to C a coal-mine. C takes possession of the mine and exhausts it. He has thereby confirmed the transfer of the estate to B.

Act X of 1865,  
s. 176.

If he does not within one year after the date of the transfer signify to the transferor or his representatives his intention to confirm or to dissent from the transfer, the transferor or his representatives may, upon the expiration of that period, require him to make his election; and if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the transfer.

Act X of 1865,  
s. 167.

In case of disability, the election shall be postponed until the disability ceases, or until the election is made by some competent authority.

#### Apportionment.

Draft, s. 64:  
Bill III, s. 86.

37. In the absence of a contract to the contrary, all rents, annuities, pensions, dividends and other periodical payments in the nature of income shall, upon the transfer of the interest of the person entitled to receive such payments, be deemed, as between the transferor and the transferee, to accrue due from day to day, and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof.

#### Severance of Obligation relating to property.

38. When in consequence of a transfer property is divided and held in several shares, and thereupon the benefit of any obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty shall, in the absence of a contract to the contrary amongst the owners, be performed in favour of each of such owners in proportion to the value of his share in the property, provided that the duty can be severed and that the severance does not substantially increase the burden of the obligation; but if the duty cannot be severed, or if the severance would substantially increase the burden of the obligation, the duty shall be performed for the benefit of such one of the several owners as they shall jointly designate for that purpose:

Provided that no person on whom the burden of the obligation lies shall be answerable for failure to discharge it in manner provided by this section, unless and until he has had reasonable notice of the severance.

#### Illustrations.

(a). A sells to B, C and D land situate in a village and leased to E at an annual rent of Rs. 30 and delivery of one fat sheep, B having provided half the purchase-money and C and D one quarter each. E having notice of this must pay Rs. 15 to B, Rs. 7½ to C and Rs. 7½ to D, and must deliver the sheep according to the joint direction of B, C and D.

(b). Each house in the village being bound to provide ten days' labour each year on a dyke to prevent inundation, E had agreed as a term of his lease to perform this work for A. B, C and D severally require E to perform the ten days' work due on account of the house of each. E is not bound to do more than ten days' work in all, according to such directions as B, C and D may join in giving.

#### B.—Transfer of Immoveable Property.

39. Where any person authorized only under Bill III, s. 7.

Transfer by person authorized only under certain circumstances to transfer. circumstances in their nature variable to dispose of immoveable property transfers such property for consideration, alleging the existence of such circumstances, they shall, as between the transferee on the one part and the transferor and other persons (if any) affected by the transfer on the other part, be deemed to have existed, if the transferee, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith.

#### Illustration.

A, a Hindú widow, whose husband has left collateral heirs, agrees, for purposes neither religious nor charitable, to sell a field, part of the property held by her as such, to B. B satisfies himself by reasonable enquiry that the income of the property is in sufficient for A's maintenance, and that the sale of the field is necessary, and, acting in good faith, buys the field. As between B on the one part and A and the collateral heirs on the other part, a necessity for the sale shall be deemed to have existed.

40. Where a third person has a right to receive maintenance or a provision for advancement or marriage from the profits of immoveable property, and such property is transferred with the intention of defeating such right, the right may be enforced against the transferee, if he has notice of such intention or if the transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands.

#### Illustrations.

(a). A, a Hindú, transfers Sultánpur to his sister-in-law B, in lieu of her claim against him for maintenance in virtue of his having succeeded to her deceased husband's property, and agrees with her that if she is dispossessed of Sultánpur, A will transfer to her an equal area out of such of several other specified villages in his possession as she may elect. A sells the specified villages to C, who buys in good faith, without notice of the agreement. B is dispossessed of Sultánpur. She has no claim on the villages transferred to C.

(b). A, a Hindú widow, is entitled to maintenance out of the share of her deceased husband in Basaoli, which has passed to his brother B. B sells Basaoli to C, who has notice that there is no other property to satisfy A's claim. A may claim maintenance out of Basaoli in the hands of C.

Where for the more beneficial enjoyment of his or has a right to re- own immoveable property a strain its enjoyment, third person has, independently of any interest in the immoveable property of another, a right to restrain the enjoyment of the latter property or to compel its enjoyment in a particular manner, or

where a third person is entitled to the benefit of an obligation arising out of contract and annexed to the ownership of immoveable property, but not amounting to an interest therein or easement thereon,

Wilson v.  
Hare, L. R. 1  
Ch.  
Richards v.  
Renell, 7 Ch.  
Div. 224.  
Maclean v.  
Mackay, L. R.  
5 P. (32).  
S. A. 135 of  
1877.

such right or obligation may be enforced against a transferee with notice thereof or a gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation, nor against such property in his hands.

*Illustration.*

A contracts to sell Sultánpur to B. While the contract is still in force he sells Sultánpur to C, who has notice of the contract. B may enforce the contract against C to the same extent as against A.

III, s. 7:  
IX of  
s. 108,  
para. 2.

41. Where with the consent, express or implied, Transfer by ostensible owner. of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it: provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

*Illustrations.*

(a). A, one of two co-proprietors of village land, leaves his village, and with his consent the land is registered by the Revenue-officer in the name of B, the other co-proprietor. After ten years B sells a portion of the land to C, who takes reasonable care to ascertain that B had power to make the transfer and acts in good faith. A is not entitled to have the sale set aside.

(b). A buys land and causes it to be transferred to his servant B to hold on his behalf, and also causes it to be entered in the revenue register in B's name. C, having ascertained that B is the registered owner of the land and pays the revenue due in respect thereof, buys the land in good faith from B. A cannot impeach the sale.

III, s.  
para. 2.

42. Where a person having authority to revoke a transfer of any immoveable property, transfers the property for consideration, such transfer operates in favour of the transferee (subject to any condition attached to the exercise of the authority) as a revocation of the former transfer to the extent of the authority.

Transfer by person having authority to revoke transfer.

*Illustration.*

A lets a house to B and reserves power to revoke the lease if in the opinion of a specified surveyor B should make a use of it detrimental to its value. Afterwards A, thinking that such a use has been made, lets the house to C. This operates as a revocation of B's lease subject to the opinion of the surveyor as to B's use of the house having been detrimental to its value.

43. Where a person erroneously represents that he is authorized to transfer certain immoveable property, and assumes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property, at any time during which the contract of transfer subsists.

Transfer by unauthorized person who subsequently acquires interest in property transferred.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

*Illustration.*

A, a Hindú who has separated from his father B, sells to C three fields, X, Y and Z. Of these Z does not belong to

A, it having been retained by B on the partition; but on B's dying A obtains Z as heir. C, not having rescinded the contract of sale, may require A to deliver Z to him.

44. Where one of two or more co-owners of im- Bill III, s. 9.

Transfer by one co-owner. moveable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.

Where the transferee of a share of a dwelling-house belonging to an undivided family is a stranger nothing in this section shall be deemed to entitle him to joint-possession or other common or part enjoyment of the house.

45. Where property is transferred for consideration to two or more persons, and such consideration is paid out of a fund belonging to them in common, they are in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled to the fund; and where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced. Bill III, s. 18.

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.

*Illustration.*

A and B are the sons and C the grandson of a Hindú who has died leaving property. C's father D has also died. A partition has been made after which A and B have reunited. C remains severed in interest, his share being one-third. The separate property of D is of the same value. The whole fund belonging to A, B and C is expended in buying an estate, X. A and B take one moiety of X as joint estate and C takes the other moiety as separate property.

46. Where a transfer of immoveable property is made for consideration by persons having distinct interests therein, the transferors are, in the absence of a contract to the contrary, entitled to share in the consideration equally, where their interests in the property transferred were of equal value, and, where such interests were of unequal value, proportionately to the value of their respective interests.

*Illustrations.*

(a). A, owing a moiety, and B and C, each a quarter share of mauza Sultánpur, exchange an eighth share of that mauza for a quarter share of mauza Lálpara. There being no agreement to the contrary, A is entitled to an eighth share in Lálpara, and B and C each to a sixteenth share in that mauza.



(b). A being entitled to a life interest in mauza Atrali and B and C to the reversion, sell the mauza for Rs. 1,000. A's life interest is ascertained to be worth Rs. 600, the reversion Rs. 400. A is entitled to receive Rs. 600 out of the purchase money, B and C to receive Rs. 400.

#### 47. Where several co-owners of immoveable property

Transfer by co-owners of share in common property. Transfer a share therein without specifying that the transfer is to take effect on any particular share or shares of the transferors, the transfer, as among such transferors, takes effect on such shares equally where the shares were equal, and where they were unequal, proportionately to the extent of such shares.

#### Illustration.

A, the owner of an eight annas share, and B and C, each the owner of a four annas share, in mauza Sultānpur, transfer a two-anna share in the mauza to D, without specifying from which of their several shares the transfer is made. To give effect to the transfer one anna share is taken from the share of A, and half an anna share from each of the shares of B and C.

#### 48. Where a person purports to create by transfer at different times rights

Priority of rights created by transfer. in or over the same immoveable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

Bill III, ss.  
17, 36.

#### 49. Where immoveable property is transferred

Transferee's right under policy. for consideration, and such property or any part thereof is at the date of the transfer insured against loss or damage by fire, the transferee, in case of such loss or damage, may, in the absence of a contract to the contrary, require any money which the transferor actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property.

Bill III, s. 8;  
Act X  
1855, s. 1.

#### 50. No person shall be chargeable with any rents

Rent *bond fide* paid to holder under defective title. or profits of any immoveable property, which he has in good faith paid or delivered to any person of whom he in good faith held such property, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits.

#### Illustration.

A lets a field to B at a rent of Rs. 50, and then transfers the field to C. B, having no notice of the transfer, in good faith pays the rent to A. B is not chargeable with the rent so paid.

Act XI of  
1855, s. 2  
2 Bom. 225.

#### 51. When the transferee of immoveable property

Improvements made by *bond fide* holders under defective titles. makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title, the transferee or his representative in interest has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in

the property to the transferee at the then market value thereof irrespective of the value of such improvement.

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

When under the circumstances aforesaid the transferee has planted or sown on the property crops which are growing when he is evicted therefrom, he is entitled to such crops and to free ingress and egress to gather and carry them.

#### 52. During the active prosecution in any Court

Transfer of property having authority in British India, or established beyond the limits of British India by the Governor General in Council, of a contentious suit or proceeding in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Bill III, s. 10;  
8 Beng. 1  
7 Mad. 1  
11 Bom. 64, 138;  
N. W. P. 1867, s. 10 W. R. 469;  
7 W. R. 15 W. R. 23 W. R. 2 Tayl. 183;  
1 O'Kin. 309;  
5 W. R. 63;  
8 Bom. J. 61.

#### 53. Every transfer of immoveable property

Fraudulent transfer. made with intent to defraud prior or subsequent transferees thereof for consideration, or co-owners or other persons having an interest in such property, or to defeat or delay the creditors of the transferor, is voidable at the option of any person so defrauded, defeated or delayed.

Where the effect of any transfer of immoveable property is to defraud, defeat or delay any such person, and such transfer is made gratuitously or for a grossly inadequate consideration, the transfer may be presumed to have been made with such intent as aforesaid.

Nothing contained in this section shall impair the rights of any transferee in good faith and for consideration.

### CHAPTER III.

#### OF SALES OF IMMOVEABLE PROPERTY.

#### 54. "Sale" is a transfer of ownership in exchange for a price paid or

"Sale" defined. promised or part-paid and part-promised.

Such transfer, in the case of tangible immoveable property of the value

Sale how made. of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered assurance.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered assurance or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.

55. In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold :

(a). The seller is bound—

(1) to disclose to the buyer any defect in the property of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover ;

(2) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power ;

(3) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto ;

(4) on payment or tender of the amount due in respect of the price, to execute a proper assurance of the property when the buyer tenders it to him for execution at a proper time and place, and, where the property is, or forms part of, a revenue-paying estate, to present an application to the proper officer for the requisite alteration of the revenue-register ;

(5) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession, as an owner of ordinary prudence would take of such property and documents ;

(6) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits ;

(7) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all incumbrances on such property due on such date ; and, except where the property is sold subject to incumbrances, to discharge all incumbrances on the property then existing ; and

(8) and the seller shall be deemed to contract that the interest which he assumes to transfer to the buyer subsists and that he has power to transfer the same :

provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract that he has done no act whereby the property is incumbered or whereby he is hindered from transferring it.

(9) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating thereto which are in the seller's possession or power :

provided that (1), where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and (2), where the whole of such property is sold to different buyers, the buyer of the lot of greatest value is entitled to such documents. But in case (1) the seller, and in case (2) the buyer of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, or by any person claiming under him, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof as he may require ; and in the meantime, the seller or the buyer, as the case may be, of the lot of greatest value must keep the said documents safe, uncanceled and undefaced, unless prevented from so doing by fire or other inevitable accident ;

(b) The seller is entitled—

(1) to the rents and profits of the property till the ownership thereof passes to the buyer ;

(2) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part.

(c). The buyer is bound—

(1) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which increases the value of such interest ;

(2) to pay or tender, at the time and place of completing the transfer, the purchase-money to the seller or such person as he directs : provided that, where the property is sold free from incumbrances, the buyer may retain out of the purchase-money the amount of the incumbrances on the property existing at the date of the transfer, and shall pay the amount so retained to the persons entitled thereto ;

(3) where the ownership of the property has passed to the buyer, to bear any loss arising from



the destruction, injury or decrease in value of the property not caused by the seller;

Bill III, s. 15. (4) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on the incumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.

(d). The buyer is entitled—

Bill III, s. 12 (e). (1) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;

Bill III, s. 12 (e). (2) unless he has improperly declined to accept delivery of the property, to a charge on the property as against the seller and all persons claiming under him with notice of the payment, to the extent of the seller's interest on the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

Bill III, s. 13. An omission to make such disclosures as are mentioned in this section, paragraph (a), clause (1), and paragraph (c), clause (1), is fraudulent.

Bill III, s. 19. 56. Where two properties are subject to a common charge, and one of the properties is sold, the buyer is, as against the seller, in the absence of a contract to the contrary, entitled to have the charge satisfied out of the other property, so far as such property will extend.

#### CHAPTER IV.

##### OF MORTGAGES OF IMMOVEABLE PROPERTY AND CHARGES.

Bill II, s. 25; Bill III, s. 21; Bill, s. 14; Act XXVIII of 1866, s. 19; 23 & 24 Vic., c. 145, s. 24. 57. (a). A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

The transferor is called a mortgagor, the transferee a mortgagee; the principal-money and interest of which payment is secured for the time being are called the mortgage-money, the interest transferred is called the mortgaged property, and the assurance (if any) by which the transfer is effected is called a mortgage-deed.

(b). Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money and agrees,

expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

(c). Where the mortgagor ostensibly sells the mortgaged property—

on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or

on condition that on such payment being made the sale shall become void, or

on condition that on such payment being made the buyer shall transfer the property to the seller, the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale.

(d). Where the mortgagor delivers possession of the mortgaged property to the mortgagee and authorises him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property and to appropriate them in lieu of interest or in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

(e). Where the mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a condition that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

58. Where the principal money secured is one hundred rupees or upwards, a mortgage can be effected only by registered assurance signed by the mortgagor and attested by at least two witnesses.

Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by assurance signed and attested as aforesaid or by delivery of the property.

Nothing in this section shall be deemed to render invalid mortgages made in the towns of Calcutta, Madras, Bombay, Karachi and Rangoon, by delivery to a creditor or his agent of documents of title to immoveable property, with intent to create a security thereon.

##### *Rights and Liabilities of Mortgagor.*

59. At any time after the principal money has become payable, the mortgagor, or, where there are more mortgagors than one, any of the mortgagors, has a right, on payment or tender, at a proper time and place, of





paid, performed and observed down to the commencement of the mortgage; and that the mortgagor will, so long as the security exists and the mortgagee is not in possession of the mortgaged property, pay the rent reserved by the lease, or, if the lease be renewed, the renewed lease, perform the conditions contained therein and observe the contracts binding on the lessee, and indemnify the mortgagee against all claims sustained by reason of the non-payment of the said rent or the non-performance or non-observance of the said conditions and contracts;

(e) and, where the mortgage is a second or subsequent incumbrance on the property, that the mortgagor will pay the interest from time to time accruing due on each prior incumbrance as and when it becomes due, and will at the proper time discharge the principal money due on such prior incumbrance.

Nothing in clause (c), or in clause (d), so far as it relates to the payment of future rent, applies in the case of an usufructuary mortgage.

Bill II, s. 31:  
*King v. Smith*  
2 Hare 243.

**65.** A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to deteriorate; but he must not commit any act which is destructive or permanently injurious thereto, if the security is insufficient or will be rendered insufficient by such act.

Lewin on  
Trusts, p. 263.

*Explanation.*—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

#### *Rights and Liabilities of Mortgagee.*

Bill II, s. 34:  
2 Mad. 289  
N. W. P.,  
1870, p. 311:  
No foreclosure  
before expiration  
of period  
named, 2  
Bomb. 242:  
Mortgagee's  
right to sale,  
7 Bomb. A. C.  
J. 146: 9  
Bomb. 12.

**66.** In the absence of a contract to the contrary, the mortgagee has, at any time after the mortgage-money has become payable to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid or deposited as hereinafter provided, a right to obtain from the Court an order that the mortgagor shall be absolutely debarred of his right to redeem the property, or an order that the property be sold.

A suit to obtain an order that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure.

Nothing in this section shall be deemed—

Simple mort-  
gagee, N. W.  
P., 1869, p.  
184: Usufruc-  
tuary, N. W.  
P., 1875, p.  
55.

(a) to authorize a simple mortgagee as such to institute a suit for foreclosure, or an usufructuary mortgagee as such to institute a suit for foreclosure or sale, or a mortgagee by conditional sale as such to institute a suit for sale; or

Fishr 518,  
757:  
Qy. as to con-  
ditional mort-  
gages.

(b) to authorize a mortgagor who holds the mortgagee's rights as his trustee or legal representative and who may sue for a sale of the property to institute a suit for foreclosure; or

(c) to authorize the mortgagee of a railway, canal or other work in the maintenance of which the public are interested to institute a suit for foreclosure or sale; or

(d) to authorize a person interested in part only of the mortgage-money to institute a suit relating only to a corresponding part of the mortgaged property: unless the mortgagees have, with the consent of the mortgagor, severed their interests under the mortgage.

Cases contra  
Macph. 195,  
196.

**67.** The mortgagee has a right to sue the mortgagor for the mortgage-money in the following cases only:—

Bill II, s. 38  
Bill I, s. 3

(a) where the mortgagor binds himself to repay the same:

(b) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor:

Macph. 233  
Act XXXII  
of 1871, s. 7  
25 W. R. 7  
(partial de-  
privation).

(c) where the mortgagee being entitled to possession of the property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any other person.

4 Moo. L. 4  
461:  
Mahab. 209  
7 S. D. A.  
N. W. P.,  
1860, p. 28  
So in the case  
of a Kámar  
mortgage, 3  
Mad. 315:  
6 W. R. 28  
(power to  
usufructury  
mortgagee)

Where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property has been wholly or partially destroyed, or the security is rendered insufficient as defined in section sixty-five, the mortgagee may require the mortgagor to give him within a reasonable time another sufficient security for his debt, and, if the mortgagor fails so to do, may sue him for the mortgage-money.

**68.** A power conferred by the mortgage-deed

on the mortgagee, or on any person on his behalf, to sell or concur in selling the mortgaged property, or any part thereof, is invalid, except where—

Bill II, s. 3  
Bill, s. 24:  
8 Bom. A. C.  
J. 142:  
Muhamma-  
law, Macph.  
2.

(a) the principal money originally secured is five hundred rupees or upwards; or

(b) the mortgagee is the Secretary of State for India in Council; or

(c) the mortgaged property or any part thereof is situate within the towns of Calcutta, Madras, Bombay, Karáchi or Rangoon.

Act No. XXVIII of 1866, section 6, is repealed so far as it is inconsistent with this section.

**69.** If, after the date of the mortgage, any

Bill II, s.  
11 Bomb.  
I. L. R. 5  
Calc. 198.

accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to such accession.

#### *Illustrations.*

(a). A mortgages to B a certain field bordering on a river. The field is increased by alluvion. For the purposes of his security, B is entitled to the increase.

(b). A mortgages a certain plot of building land to B and afterwards erects a house on the plot. For the purposes of his security, B is entitled to the house as well as the plot.

Bill I, s. 38. 70. When the mortgaged property is a lease for a term of years, and the mortgagor obtains a renewal of the lease, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to the new lease.

Bill II, s. 42: Bill, s. 16. 71. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he may spend such money as is necessary—

(a) for the due management of the property and the collection of the rents and profits thereof;

(b) for its preservation from destruction, forfeiture or sale;

(c) for supporting the mortgagor's title to the property;

(d) for making his own title thereto good against the mortgagor; and

(e) when the mortgaged property is a renewable leasehold, for the renewal of the lease;

and may, in the absence of a contract to the contrary, and such money to the principal-money, at the rate of interest payable on the principal, and where no such rate is fixed at the rate of nine per cent. per annum.

Where the property is by its nature insurable at ordinary rates, the mortgagee may also, in the absence of a contract to the contrary, insure and keep insured against loss or damage by fire the whole or any part of such property, and add the premiums paid for any such insurance to the principal-money at the same rate of interest.

72. Where mortgaged property is sold through failure to pay arrears of revenue or rent due in respect thereof, the mortgagee has a charge on the surplus, if any, of the proceeds, after payment thereof of the said arrears, for the amount remaining due on the mortgage, unless the sale has been occasioned by some default on his part.

73. Any second or other subsequent mortgagee may, at any time after the amount due on the next prior mortgage has become payable, tender such amount to the next prior mortgagee, and such mortgagee is bound to accept such tender and to give a receipt for such amount; and (subject to the provisions of the law for the time being in force regulating the registration of documents) the subsequent mortgagee shall, on obtaining such receipt, acquire, in respect of the property, all the rights and powers of the mortgagee, as such, to whom he has made such tender.

74. Every second or other subsequent mortgagee has, so far as regards redemption, foreclosure and sale of the mortgaged property, the same rights against the prior mortgagee as his mortgagor has against such prior mortgagee or mortgagees, and the same rights against the subsequent mortgagees (if any) as he has against his mortgagor.

75. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property,—

(a) he must manage the property as a person of ordinary prudence would manage it if it were his own;

(b) he must use his best endeavours to collect the rents and profits thereof;

(c) he must, in the absence of a contract to the contrary, out of the income of the property, pay the Government-revenue, all other charges of a public nature accruing due in respect thereof during such possession and any arrears of rent of default of payment of which the property may be summarily sold;

(d) he must, in the absence of a contract to the contrary, make such necessary repairs of the property as he can pay for out of the rents and profits thereof after deducting from such rents and profits the payments mentioned in clause (c) and the interest on the principal-money.

(e) he must not commit any act which is destructive or permanently injurious to the property;

(f) where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy, or so much thereof as may be necessary, in reinstating the property;

(g) he must keep clear, full and accurate accounts of all sums received and spent by him as mortgagee, and, at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported;

(h) his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation-rent in respect thereof, shall, after deducting the expenses mentioned in clauses (c), (d) and (e), and interest thereon, be debited against him in reduction of the amount (if any) from time to time due to him on account of interest on the mortgage-money and so far as such receipts exceed any interest due, in reduction or discharge of the mortgage-money; the surplus, if any, shall be paid to the mortgagor;

(i) when the mortgagor tenders, or deposits in manner hereinafter provided, the amount for the

Bill III, s. 39.

possession of the mortgaged property,—

2 Bomb. 222.

Act IX of

1872, s. 151:

Fisher, s.

1530.

8 Chan. Div.

427:

N. W. P.,

1875, p. 100.

2. Bomb. 231.

Macph. 113.

119.

9 W. R. 488:

4 Y. & C. Ap-

pendix, 507:

Fisher, s.

1530.

Bill II, s. 44:

III, s. 41:

Bill, s. 18 al-

tered:

Macph. 118,

119, citing 7

N. W. P.

436:

9 N. W. P. 1

Act I of

1877, s. 54.

2 Beng. P. C.

55:

5 W. R. 53,

271, &c.:

Macph. 119.

5 Bomb. A. C.

J. 196:

12 Bomb. 88:

10 Beng. 386:

N. W. P.,

1866, p. 132:

ibid, 1868, p.

153:

When he cul-

tivates, 7 W.

R. B. Ghose

262.

2 Moo. I. A.

Ca. 1.

Macph. 159,

160:



time being due on the mortgage, the mortgagee must, notwithstanding the provisions in the other clauses of this section, account for his gross receipts from the mortgaged property from the date of the tender or from the earliest time when he could take such amount out of Court, as the case may be.

Bill II, s. 62. If the mortgagee fail to perform any of the duties imposed upon him by this section, he may, when accounts are taken in pursuance of a decree made under this chapter, be debited with the loss, if any, occasioned by such failure.

Bill II, s. 43: 76. Nothing in section seventy-five, clauses (b), (d), (g) and (h), applies to cases where there is a contract between the mortgagee and the mortgagor that the receipts from the mortgaged property shall, so long as the mortgagee is in possession of the property, be taken in lieu of interest on the principal-money, or of such interest and defined portions of the principal.

#### Priority.

Bill II, s. 46; 77. Where, through the fraud, misrepresentation or gross neglect of a prior mortgagee, another person has been induced to advance money on the security of the mortgaged property, the prior mortgagee shall be postponed to the subsequent mortgagee.

Bill, s. 44:  
Evidence Act,  
s. 115:  
N. W. P.,  
1868, p. 402:  
4 Mad. 373:  
2 Moo. I. A.  
487:  
11 W. R. 286:  
8 Bom. A.  
C. J. 50, 55:  
Secus in Guz-  
rat, 11 Bom.  
Bill II, s. 47:  
III, s. 25:  
Bill, s. 34:  
Report, s. 29.

78. If a mortgage made to secure future advances, the performance of an engagement or the balance of a running account expresses the maximum to be secured thereby, a subsequent mortgage of the same property shall, if made with notice of the prior mortgage, or if the instrument effecting the prior mortgage is registered, be postponed to the prior mortgage in respect of all advances or debits not exceeding the maximum, though made or allowed with notice of the subsequent mortgage.

#### Illustration.

A mortgages Sultánpur to his bankers, B & Co., to secure the balance of his account with them to the extent of Rs. 10,000. A then mortgages Sultánpur to C, to secure Rs. 10,000; and C gives notice thereof to B & Co. At the date of the second mortgage, the balance due to B & Co. does not exceed Rs. 5,000. B & Co. subsequently advance to A sums making the balance of the account against him exceed the sum of Rs. 10,000. B & Co. are entitled, to the extent of Rs. 10,000, to priority over C.

Bill II, s. 48: 79. No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security. And, except in the case provided for by section seventy-eight, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an

intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance.

#### Marshalling and Contribution.

80. If the owner of two properties mortgages them both to one person and then mortgages one of the properties to another person who has not notice of the former mortgage, the second mortgagee is, in the absence of a contract to the contrary, entitled to have the debt of the first mortgagee satisfied out of the property not mortgaged to the second mortgagee so far as such property will extend; but not so as to prejudice the rights of the first mortgagee or of any other person having acquired for valuable consideration an interest in either property.

81. Where several properties, whether of one or several owners, are mortgaged to secure one debt, each property is, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, after deducting from the value of each property the amount of any other incumbrance to which it is subject at the date of the mortgage.

Where, of two properties belonging to the same owner, one is mortgaged to secure one debt and then both are mortgaged to secure another debt, and the former debt is paid out of the former property, each property is, in the absence of a contract to the contrary, liable to contribute rateably to the latter debt after deducting the amount of the former debt from the value of the property out of which it has been paid.

Nothing in this section applies to a property liable under section eighty to the claim of the second mortgagee.

#### Deposit in Court.

82. At any time after the principal-money has become payable and before a suit for redemption of the mortgaged property is barred, the mortgagor, or any other person entitled to institute such suit, may deposit, in any Court in which he might have instituted such suit, to the account of the mortgagee, the amount remaining due on the mortgage.

The Court shall thereupon cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, on presenting a petition (verified in manner prescribed by law for the verification of plaints) stating the amount then due on the mortgage, and his willingness to accept the money so deposited in full discharge of such amount, and on depositing in the same Court the mortgage-deed if then in his possession or power, apply for and receive the money, and the mortgage-deed so deposited shall be delivered to the mortgagor or such other person as aforesaid.

W. P. 1:  
ch. 159.

III, s. 32.

83. When the mortgagor or such other person as aforesaid has tendered or deposited in Court under section eighty-two the amount remaining due on the mortgage, interest on the principal-money shall cease from the date of the tender or as soon as the mortgagor or such other person as aforesaid has done all that has to be done by him to enable the mortgagee to take such amount out of court, as the case may be.

Nothing in this section or in section eighty-two shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to reasonable notice before payment or tender of the mortgage-money.

*Suits for Foreclosure, Sale or Redemption.*

II, s. 52:

s. 49:

Moo. I. A.

I W.

176: 21

B. 423

ained by

eph. 146:

on 1, 442,

Act X of

7, s. 32:

omb. O. C.

6 (Legal

representative

deceased

mortgagor):

eng. 104

rchaser

on mortga-

y: Marshall

2, claimants

right of

emption,

W. P.

88, p. 144.

84. Subject to the provisions of the Code of Civil Procedure, section 437, all persons having an interest in the property comprised in a mortgage must be joined as parties to any suit under this chapter relating to such mortgage: provided that the plaintiff has notice of such interest.

*Foreclosure and Sale.*

II, s. 53:

s. 50:

s. 19.

85. In a suit for foreclosure, if the plaintiff succeed, the Court shall make a decree, ordering that an account be taken of what will be due to the plaintiff for principal and interest on the mortgage, and for his costs of the suit, if any, awarded to him, on the day next hereinafter referred to, or declaring the amount so due at the date of such decree,

and ordering that, upon the defendant paying to the plaintiff or into Court the amount so due, on a day within six months from the date of declaring in Court the amount so due, to be fixed by the Court, the plaintiff shall deliver up to the defendant, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall transfer the property to the defendant free from all incumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title, by those under whom he claims; and shall, if necessary, put the defendant into possession of the property; but

that, if the payment is not made on or before the day to be fixed by the Court, the defendant shall be absolutely debarred of all right to redeem the property.

86. If payment is made of such amount and Bill II, s. 54.

Procedure in case of payment of amount due. of such subsequent costs as are mentioned in section ninety-three, the defendant shall (if necessary) be put into possession of the mortgaged property.

If such payment is not so made, the plaintiff may apply to the Court for an order that the defendant and all persons claiming through or under him be debarred absolutely of all right to redeem the mortgaged property, and the Court shall then pass such order, and may, if necessary, deliver possession of the property to the plaintiff.

Provided that the Court may, upon good cause W. R. 91.

Power to enlarge time. shewn, and upon such terms, if any, as it thinks fit, from time to time postpone the day appointed for such payment.

On the passing of an order under the second paragraph of this section the debt secured by the mortgage shall be deemed to be discharged.

In the Code of Civil Procedure, schedule IV, No. 129, for the words "Final decree," the words "Decree absolute" shall be substituted.

87. In a suit for sale, if the plaintiff succeed, the Bill II, sec. 55.

Decree for sale. Court shall pass a decree to the effect mentioned in the first and second paragraphs of section eighty-five, and also ordering that, in default of the defendant paying as therein mentioned, the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is so found due to the plaintiff, and that the balance, if any, be paid to the defendant or other persons entitled to receive the same.

In a suit for foreclosure, if the plaintiff succeed, the Court may at his instance pass a like decree in lieu of a decree for foreclosure.

When the mortgagee sues only for foreclosure Bill, s. 21:

Power to decree sale in foreclosure-suit at instance of mortgagor. sure, and not for foreclosure or sale, if the Court consider that he will not be damnified by a sale and if the defendant furnishes such security as the Court thinks sufficient for the full and prompt payment of the balance due for the time being by him on the mortgage, the Court may, at the instance of the defendant, pass a like decree.

88. If in any case under section eighty-seven the Bill II, s. 56.

Procedure when defendant pays amount due. defendant pays to the plaintiff or into court on the day fixed as aforesaid the amount due under the mortgage, the costs, if any, awarded to him and such subsequent costs as are mentioned in section ninety-three, the defendant shall (if necessary) be put in possession of the mortgaged property; but if such payment is not so made, the plaintiff or the defendant, as the case may be, may



apply to the Court for an order absolute for sale of the mortgaged property, and the Court shall then pass an order that such property, or a sufficient part thereof, be sold, and that the proceeds of the sale be dealt with as is mentioned in section eighty-seven; and thereupon the defendant's right to redeem and the security shall both be extinguished.

Bill III, s. 54: 89. When the nett proceeds of any such sale are insufficient to pay the amount due for the time being on the mortgage, the balance, if legally recoverable from the defendant otherwise than out of the property sold, may be recovered either (if the Court thinks fit) in the same suit in the same manner as under a decree for money, or by any other legal process open to the mortgagee.

#### Redemption.

Bill II, s. 58: 90. Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property:—

(a) any person (other than the mortgagee of the interest sought to be redeemed) having any interest in or charge upon the property;

3 W. R. 230: (b) any person having any interest in, or charge upon, the right to redeem the property;

6 W. R. 230, &c.: (c) any surety for the payment of the mortgage-debt or any part thereof;

But see 17 W. R. 272. (d) the guardian of the property of a minor mortgagor on behalf of such minor;

(e) the committee or other legal curator of a lunatic or idiot mortgagor on behalf of such lunatic or idiot;

(f) the judgment-creditor of the mortgagor, when he has obtained execution;

Fisher, 768. (g) a creditor of the mortgagor who has, in a suit for the administration of his estate, obtained a decree for sale of the mortgaged property.

Bill II, s. 59: 91. In a suit for redemption, if the plaintiff succeeds, the Court shall pass a decree—

ordering that an account be taken of what will be due to the defendant for the mortgage-money and for his costs of the suit, if any, awarded to him, on the day next hereinafter referred to, or declaring the amount so due at the date of such decree; and ordering that, upon the plaintiff paying to the defendant or into Court the amount so due on a day within six months from the date of declaring in Court the amount so due, to be fixed by the Court, the defendant shall deliver up to the plaintiff or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall re-transfer it to the plaintiff free from the mortgage and from all incumbrances created by the defendant or any person claiming under him, or, when the defendant claims by derived title, by those under whom he claims, and shall, if necessary, put

the plaintiff into possession of the mortgaged property;

that if such payment is not made on or before the day to be fixed by the Court, the plaintiff shall (unless the mortgage be simple or usufructuary) be absolutely debarred of all right to redeem the property, or (unless the mortgage be by conditional sale) that the property be sold.

92. If payment is made of such amount and of such subsequent costs as are mentioned in section ninety-three, the plaintiff shall, if necessary, be put into possession of the mortgaged property.

If such payment is not so made, the defendant may (unless the mortgage is simple or usufructuary) apply to the Court for an order that the plaintiff and all persons claiming through or under him be debarred absolutely of all right to redeem, or (unless the mortgage is by conditional sale) for an order that the mortgaged property be sold.

If he apply for the former order, the Court shall pass an order that the plaintiff and all persons claiming through or under him be absolutely debarred of all right to redeem the mortgaged property, and may, if necessary, deliver possession of the property to the defendant.

If he apply for the latter order, the Court shall pass an order that such property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is found due to the defendant, and that the balance be paid to the plaintiff or other persons entitled to receive the same.

On the passing of any order under this section the plaintiff's right to redeem and the security shall, as regards the property affected by the order, both be extinguished:

Provided that the Court may, upon good cause shown, and upon such terms, if any, as it thinks fit, from time to time postpone the day fixed under section ninety-one for payment of the amount due.

93. In finally adjusting the amount to be paid to a mortgagee in case of a redemption or a sale by the Court under this chapter, the Court shall, unless the conduct of the mortgagee has been such as to disentitle him to costs, add to the mortgage-money such costs of suit as have been properly incurred by him since the decree for foreclosure, redemption or sale up to the time of actual payment.

94. Where one of several mortgagors redeems the mortgaged property and obtains possession thereof, he has a charge on the share of each of the other co-mortgagors in the property for his proportion of the costs properly incurred in so redeeming and obtaining possession.

Charge of one of several co-mortgagors who redeems.





103. The High Court may, from time to time, make rules consistent with this Act for carrying out the provisions contained in this chapter.

## CHAPTER V.

### OF LEASES OF IMMOVEABLE PROPERTY.

104. A lease of immoveable property is a transfer of a right to enjoy such property made for a certain time express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

105. In the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immoveable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Every notice under this section must be in writing signed by or on behalf of the party giving it and tendered or delivered to the party who is intended to be bound by it, or affixed to a conspicuous part of the property.

106. A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered assurance.

107. In the absence of a contract or local usage to the contrary, the lessor and the lessee of immoveable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:—

#### A.—Rights and liabilities of the Lessor.

(a) the lessor is bound to disclose to the lessee any defect in the property, with reference to its intended use, of which the former is and the latter

is not aware, and which the latter could not with ordinary care discover:

(b) the lessor is bound on the lessee's request to put him in possession of the property leased:

(c) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property leased during the time limited by the lease without interruption:

(d) where an arrear of rent is due from any lessee, the lessor may, instead of suing for the arrear, recover the same by distress and sale of the goods found in or upon the property in respect of which the arrear is due or of the produce of such property, but subject to the local law, if any, for the time being in force relating to distresses.

#### B.—Rights and liabilities of the Lessee.

(e) if during the continuance of the lease any accession is made to the property leased, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease:

(f) if by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property leased be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void:

provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision:

(g) if the lessor neglects to make, within a reasonable time after notice, repairs which he is bound to make to the property leased, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor:

(h) if the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property leased, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor:

(i) the lessee may remove, at any time during the continuance of the lease, all things which he has attached to the earth; provided he leaves the property leased in the state in which he received it:

(j) when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property leased for the season current when the lease determines, and to free ingress and egress to gather and carry them:

S. D. A. 205: (k) the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property leased, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease:

8 Beng. 239: nothing in this clause shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee:

(l) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the lessee is, and the lessor is not, aware, and which increases the value of such interest:

(m) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf:

(n) the lessee is bound to keep, and on the termination of the lease to restore, the property leased in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter into the property leased and inspect the condition thereof and give or leave notice of any defect in such condition, and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left:

(o) if the lessee becomes aware of any proceeding to recover the property leased or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor:

(p) the lessee may use the property leased and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell timber, pull down or damage buildings, work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto:

(q) he must not, without the lessor's consent, erect on the property leased any permanent structure, except for agricultural purposes:

(r) on the determination of the lease, the lessee is bound to put the lessor into possession of the property leased.

108. If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights and, if the lessee so elects, be subject to all the liabilities, of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not by reason only of such transfer cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him:

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee pay rent to the lessor without having reason to believe that such transfer has been made, the lessee shall not be liable to pay such rent over again to the transferee.

Where only a part of the property leased is transferred by the lessor, he may (subject to the provisions of section thirty-eight) determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred.

109. Where the time limited by a lease of immovable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease.

Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

Where the time so limited is expressed to be terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such option.

110. A lease of immovable property determines—

(a) by efflux of the time limited thereby:

(b) where such time is limited conditionally on the happening of some event—by the happening of such event:

(c) where the interest of the lessor in the property leased terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event:

(d) in case the interests of the lessee and the lessor in the whole of the property leased become vested at the same time in one person in the same right:

(e) by express surrender; that is to say, in case of express surrender of right to re-



deem mort-  
gaged lease,  
N. W. P.,  
1869, p. 45.  
Surrender by  
one of several  
joint lessees,  
9 W. R. 147.

the lessee yields up his interest under the lease to the lessor, by mutual agreement between them :

(f) by implied surrender :

Marshall 250 : (g) by forfeiture ; that is to say, (1) in case the  
16 W. R. 103 : lessee breaks an express condition which provides  
25 W. R. 227 : that, on breach thereof, the lessor may re-enter,  
or the lease shall become void ; or (2) in case the  
lessee renounces his character as such by setting  
up a title in a third person or by claiming title  
in himself ; and in either case the lessor or his  
transferee does some act showing his intention to  
determine the lease :

18 W. R. 465.  
But see 22 W.  
R. 448.  
25 W. R. 147.

23 W. R. 238, (h) on the expiration of a notice to determine  
271. the lease, or to quit, or of intention to quit, the pro-  
perty leased, duly given by one party to the other.

#### Illustration to clause (f).

A, the lessee, accepts from the lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.

Bill II, s. 77,  
cl. 1 :  
W. R. F. B.  
10 :  
Marshall 25.

111. A forfeiture under section one hundred and ten, clause (g), is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting :

Provided that the lessor is aware that the forfeiture has been incurred :

2 Bom. 73.

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.

112. A notice given under section one hundred and ten, clause (h), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting.

#### Illustrations.

(a). A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires. B tenders, and A accepts, rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(b). A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires, and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.

Bill II, s. 77,  
cl. 2 :  
N. W. P.,  
1867, Ex. o. c.

Timmarsá  
Puranik v.  
Babjiya Kup-  
pagonda, 2  
Bom. 70 :  
8 W. R. 225,  
per Peacock,  
C. J.

113. Where a lease of immoveable property has been determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree

for ejectment, pass an order relieving the lessee against the forfeiture ; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred. Act XVIII of 1873, s. 34, cl. (c), para. 1.

114. The surrender, express or implied, of a lease of immoveable property does not prejudice an under-lease of the property or any part thereof previously granted by the lessee, on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease ; but, unless the surrender is made for the purpose of obtaining a new lease, the rent payable by and the contracts binding on the under-lessee shall be respectively payable to and enforceable by the lessor. 10 W. R. 384  
13 W. R. 281  
N. W. P.,  
1871, p. 63.

The forfeiture of such a lease annuls all such under-leases, except where such forfeiture has been procured by the lessor in fraud of the under-lessees.

115. If a lessee or under-lessee of property remains in possession thereof after the determination of the lease, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section one hundred and seven. Bill II, s. 78  
Bill, s. 47 :  
Report, s. 41  
3 Bom. A. C.  
J. 27 :  
2 Beng. 253  
N. W. P.,  
1870, p. 204  
7 W. R. 132  
16 W. R. 18  
22 W. R. 384  
548 :  
23 W. R. 27  
25 W. R. 23

#### Illustrations.

(a). A lets a house to B for five years. B underlets the house to C at a monthly rent of Rs. 100. The five years expire, but C continues in possession of the house and pays the rent to A. C's lease is renewed from month to month.

(b). A lets a farm to B for the life of C. C dies, but B continues in possession with A's assent. B's lease is renewed from year to year.

116. None of the provisions of this chapter apply to leases for agricultural purposes, except in so far as the local Government, with the previous sanction of the Governor General in Council, may by notification published in the official Gazette declare all or any of such provisions to be so applicable, together with, or subject to, those of the local law, if any, for the time being in force.

Such notification shall not take effect until the expiry of six months from the date of its publication.

## CHAPTER VI.

### OF EXCHANGES.

117. When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an "exchange." Bill II, s. 48  
Bill, s. 48  
Mad. 18

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

II, s. 22.  
118. In the absence of a contract to the contrary, the party deprived of the thing or part thereof he has received in exchange by reason of any defect in the title of the other party is entitled at his option to compensation or to the return of the thing transferred by him.

II II, s. 23:  
III, s. 48,  
ra. 2.  
119. Save as otherwise provided in this chapter, each party has the rights and is subject to the liabilities of a seller as to that which he gives, and has the rights and is subject to the liabilities of a buyer as to that which he takes.

II II, s. 24:  
II, s. 48,  
ra. 3:  
Mort. 105.  
120. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

## CHAPTER VII.

## OF GIFTS.

121. "Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Such acceptance must be made during the life-time of the donor and while he is still capable of giving.

C. 1531.  
If the donee dies before acceptance, the gift is void.

III of  
77, s. 17,  
(a).  
122. For the purpose of making a gift of immoveable property, the transfer must be effected by registered assurance signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of moveable property, the transfer may be effected either by a non-testamentary instrument [registered and] signed as aforesaid or by delivery.

IX of  
72, s. 90.  
Such delivery may be made in the same way as goods sold may be delivered.

123. A gift comprising both existing and future property is void as to the latter.

II, 114.  
124. A gift of a divisible thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted.

125. The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part at the mere will of the donor is void wholly or in part, as the case may be.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

1 L. R., 2 All.  
432.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

## Illustrations.

(a). A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants die before A. B dies without descendants in A's lifetime. A may take back the field.

(b). A gives a l  kh of rupees to B, reserving to himself, with B's assent, the right to take back at pleasure Rs. 10,000 out of the l  kh. The gift holds good as to Rs. 90,000, but is void as to Rs. 10,000, which continue to belong to A.

126. Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not, burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully. Act X of 1865, s. 109.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous. Act X of 1865, s. 110.

A donee not competent to contract and accepting property burdened by any obligation is not bound by his acceptance. But if, after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound.

## Illustrations.

(a). A has shares in X, a prosperous joint stock company, and also shares in Y, a joint stock company in difficulties. Heavy calls are expected in respect of the shares in Y. A gives B all his shares in joint stock companies. B refuses to accept the shares in Y. He cannot take the shares in X.

(b). A, having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is more than the house can be let for, gives to B the lease, and also, as a separate and independent transaction, a sum of money. B refuses to accept the lease. He does not by this refusal forfeit the money.

127. Subject to the provisions of section one hundred and twenty-six, where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by the donor at the time of the gift to the extent of the property comprised therein.

128. Nothing in this chapter relates to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan law, Saving of donations mortis caus   and Muhammadan law.



## CHAPTER VIII.

## OF TRANSFERS OF ACTIONABLE CLAIMS.

**129.** A claim is actionable when the civil Courts recognise it as a ground for relief, whether a suit for its enforcement is or is not actually pending or likely to become necessary.

**130.** No transfer of any debt or any beneficial interest in moveable property shall have any operation against the debtor or against the person in whom the property is vested, until express notice of the transfer is given to him, unless he is a party to such transfer; and every dealing by such debtor or person, not being a party to, and not having received express notice of, a transfer, with the debt or property shall be valid as against such transfer.

*Illustrations.*

(a). A owes money to B, who transfers the debt to C. B then demands the debt from A, who, having no notice of the transfer, pays B. The payment is valid, and C cannot sue A for the debt.

(b). A has jewels deposited with B, a jeweller. A mortgages them to C. A then executes an instrument transferring them to D, who takes it to B, and gets the jewels from him before he, B, has received any notice of C's mortgage. B is justified in handing the jewels to D, and C has no remedy against D.

**131.** Every such notice must be in writing signed by the person making the transfer, or by his agent duly authorized in this behalf.

**132.** On receiving such notice, the debtor or person in whom the property is vested shall give effect to the transfer unless where the debtor resides, or the property is situate, in a foreign country and the title of the person in whose favour the transfer is made is not complete according to the law of such country.

**133.** Where the transferor of a debt warrants the solvency of the debtor, the warranty, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer, and is limited, where the transfer is made for consideration, to the amount or value of such consideration.

**134.** Where an actionable claim is sold, he against whom it is claimed is wholly discharged by paying to the buyer the price and incidental expenses of the sale, with interest on the price from the day that the buyer paid it.

Nothing in the former part of this section applies—

(a) where the sale is made to the co-heir or co-proprietor of the claim sold;

(b) where it is made to a creditor in payment of what is due to him;

(c) where it is made to the possessor of a property subject to the actionable claim;

(d) where the judgment of a competent Court has been delivered affirming the claim, or where the claim has been made clear by evidence and is ready for judgment.

**135.** No judge, pleader, clerk, bailiff or other officer connected with Courts of justice can buy any actionable claim falling under the jurisdiction of the Court in which he exercises his functions.

**136.** The person to whom a debt or charge is transferred shall take it subject to all the liabilities to which the transferor was subject in respect thereof at the date of the transfer.

*Illustration.*

A debenture is issued in fraud of a public company to A. A sells and transfers the debenture to B, who has no notice of the fraud. The debenture is invalid in the hands of B.

**137.** When a debt is transferred for the purpose of securing an existing or future debt, the original debt, if recovered by either the transferor or transferee, is applicable, first, in payment of the costs of such recovery; secondly, in or towards satisfaction of the amount for the time being secured by the transfer; and the residue, if any, belongs to the transferor.

**138.** Save as provided by section one hundred and thirty-seven, nothing in this chapter applies to negotiable instruments.

## THE SCHEDULE.

## (a). STATUTE.

Year and chapter.	Subject.	Extent of repeal.
27 Hen. VIII, c. 10.	Uses ...	The whole.
4 Wm. & Mary, c. 16.	Claudestine mortgages	The whole.

## (b). ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Subject.	Extent of repeal.
XXIX of 1842	Lease and release ...	The whole.
XXXI of 1854	Modes of conveying land	Section 17.
XI of 1855	Mesne profits and improvements.	Section 1; and in the title and preamble, the words "to mesne profits and" and "to limit the liability for mesne profits and."
XXVII of 1866	Indian Trustee Act ...	Section 31.
IV of 1872	Panjab Laws Act ...	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806.
XX of 1875	Central Provinces Laws Act.	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806.

(b). ACTS OF THE GOVERNOR GENERAL IN COUNCIL —*contd.*

Number and year.	Subject.	Extent of repeal.
XVIII of 1876	Oudh Laws Act ...	So far as it relates to Bengal Regulation XVII of 1806.
I of 1877	Specific Relief ...	In sections 35 and 36, the words "in writing."

## (c). REGULATIONS.

Number and year.	Subject.	Extent of repeal.
Bengal Regulation I of 1798.	Conditional sales ...	The whole Regulation.
Bengal Regulation XVII of 1806.	Redemption ...	The whole Regulation.
Bombay Regulation V of 1827.	Mortgagees in possession	Section 15.

D. FITZPATRICK,  
Secretary to the Government of India.



## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

[First Publication.]

The following further Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 11th March, 1881:—

WE, the undersigned Members of the Select Committee to which the Bill to define and amend the law relating to alluvion, islands and abandoned river-beds was referred, have the honour to report that we have considered the Bill and the papers noted in the margin, together with the part of the report of the late Indian Law Commission which deals with the Bill as settled in March, 1879.

2. We have carefully considered the alternative drafts proposed by Sir C. Turner and Mr. Justice West, but we cannot recommend either of them for adoption. Sir C. Turner's has the advantage of simplifying the measure in certain respects, but this advantage is gained by leaving it to the Courts to decide without any rules to guide them.

3. We think that the Bill submitted to the Law Commission will answer its purposes, subject only to two alterations in substance, namely, the substitution of one simple rule for the several rules originally proposed for determining the manner in which newly formed land, to which it is admitted the riparian owners are entitled, should be distributed among them, and a modification of the definition of frontage.

4. As regards the former, it seems to us that the rules laid down by the Bill as last settled for deciding disputes between competing riparian owners and dividing the new land between them would be likely to give rise to difficulties in practice.

These rules are different for rivers on the one hand, and the sea and lakes on the other; and again, for islands, for land formed on the bank and for abandoned river-beds. These distinctions not only make the law more complicated, but, further, may give rise to questions for the solution of which that Bill does not altogether provide. Again, in some instances (sections 4 and 6), they merely postpone the evil day by leaving important difficulties to be disposed of by rules to be made hereafter by the Local Governments. Further, they greatly complicate the question by making its solution depend on the "thread of the stream," a line or combination of lines which it would often be hard to determine, and which might, when determined, turn out to be of a very irregular shape; and, as regards the particular matter of the normals to be drawn under sections 7 and 9, it appears that cases would sometimes present themselves in practice in which no such normals could be drawn.

- From Chief Secretary to Government, Bombay, No. 1635, dated 25th March, 1879 [Paper No. 22].
- " J. W. Best, Esq., District and Sessions Judge, South Kanara, No. 8, dated 3rd April, 1879 [Paper No. 23].
- " Officiating Secretary to Chief Commissioner, Mysore, No. 751-11, dated 26th April, 1879 [Paper No. 24].
- " Secretary for Birar to Resident Haidarabad, No. 6, dated 5th May, 1879 [Paper No. 25].
- " Secretary to Chief Commissioner, Assam, No. 755, dated 2nd May, 1879 [Paper No. 26].
- " Acting Chief Secretary to Government, Bombay, No. 2629, dated 19th May, 1879 [Paper No. 27].
- " Chief Commissioner, Ajmer and Merwara, No. 388, dated 21st May, 1879, and enclosure [Papers No. 28].
- " Assistant Secretary to Chief Commissioner, Central Provinces, No. 2222-113, dated 19th May, 1879 [Paper No. 29].
- Translation of Memorial from Dabir Pershad and others, zamindars, Raipur, No. 8, dated 3rd May, 1879 [Paper No. 30].
- From Under Secretary to Government, Bengal, No. 1234-516 LR, dated 27th May, 1879, and enclosure [Papers No. 31].
- " Secretary to Government, Panjab, No. 160C, dated 19th June, 1879, and enclosures [Papers No. 32].
- " Acting Chief Secretary to Government, Madras, No. 1322, dated 6th June, 1879, and enclosures [Papers No. 33].
- " Certain inhabitants of Elás, Broach District, dated 15th June, 1879 [Paper No. 34].
- " Acting Chief Secretary to Government, Madras, No. 1387, dated 13th June, 1879, and enclosures [Papers No. 35].
- " Acting Chief Secretary to Government, Madras, No. 1401, dated 16th June, 1879, and enclosures [Papers No. 36].
- " Acting Chief Secretary to Government, Madras, No. 1508, dated 26th June, 1879, and enclosures [Papers No. 37].
- " Officiating Secretary to Chief Commissioner, British Burma, No. 310, dated 10th July, 1879 [Paper No. 34].
- " Secretary to Government, North-Western Provinces and Oudh, No. 1709, dated 4th August, 1879, and enclosures [Papers No. 39].
- Note by D. Fitzpatrick, Esq., Secretary to the Government of India, Legislative Department, dated 22nd January, 1881, and enclosures [Papers No. 40].



5. To avoid these difficulties we propose to substitute for the original provisions of the Bill on this point, two rules which will cover all cases in which two or more riparian owners may be conceived to have claims to a new formation. The first of these rules is intended to apply to all cases in which new land is formed on a bank by imperceptible increments; the second to all other formations to which riparian owners may have a claim.

6. The former class of cases appears to us to be simple enough. We conceive that, when land is formed by imperceptible degrees on a portion of the bank belonging to a single proprietor, he should take that land in whatever direction and to whatever extent it may grow. It is only when the formation, or any portion of it, springs from a nucleus at the point of junction of two frontages that any question can arise, and we have (section 4) provided that in this case the dividing line shall be the bisector of the angle between the two frontages.

7. The cases to be dealt with by the second rule, on the contrary, may present every variety of complication, but we think they may be provided for by a rule which is capable of being simply expressed, which would generally be easy to apply, and about the application of which there would never be any serious difficulty, and which, moreover, would make as fair a division of the new land as can be hoped for in a class of cases for which, in the absence of anything in the way of a definite principle to guide us, we must be content with a somewhat rough-and-ready rule.

The rule we propose (section 6) is that each particle of the new formation shall belong to that one of the riparian owners who can show a point in his frontage nearest to it; provided that, when the line dividing the portion of the land to which one owner is entitled from the portion to which another is entitled is an arc of a curve, the chord of such arc shall be substituted for the arc. The dividing line given by this rule will be different according to the relative positions of the two competing frontages, but it will be one which it will be always easy to draw.

In ordinary cases it will be the bisector of the angle between the frontages, or, in the case of holdings on opposite sides of a river with parallel frontages, a line parallel to the frontages and equidistant from both; in others it will be the perpendicular erected at the middle point of the line connecting the extremities of the frontages; and in others, again, it will be the chord of a parabola. As this last line might at first sight be supposed to present some difficulty, we think it well to explain that the chord can be drawn without describing the parabola, and by a person altogether ignorant of the nature and properties of that curve. It is, in fact, simply the right line connecting two points which could be fixed by any patwari or amin without the slightest difficulty. We may add, as regards the substitution of the chord for the arc in this case, that it not only simplifies the problem, but also makes what we believe, would, by most persons be considered a fairer division of the land.

8. Coming now to the definition of "frontage," it has been pointed out to us by Mr. Elliot that the original definition would, under the Bill as last settled, sometimes lead to anomalous results, as, for example, when a riparian holding extended completely round the concave face of a sharp curve in a river, in which case the frontage might approach within a few yards of the opposite bank or even cut off a considerable portion of it. These anomalies would be increased rather than diminished under the new rule for the division of the land now adopted, and we have accordingly been compelled to seek for a new definition.

The object of introducing the "frontage" is to substitute right lines for the irregularly shaped bank of the river, and thus to simplify the application of our rules: the defect of the original definition is that, in requiring a single right line to be substituted for the entire riparian boundary of each holding, the artificial riparian boundaries thus obtained in some cases deviate too widely from the real boundaries; and the remedy appears to be to declare that in such cases, instead of the single line, a series of two, or, if necessary, more, lines following more closely the real line of the bank shall be adopted. For this we have attempted to provide in the directions given in schedule II for drawing a frontage.

9. We have struck out the definition of "owner," as we think that the Courts may be trusted to determine who in a given case is the riparian proprietor, and we have also omitted the definitions of "thread of the stream," as the expression does not occur in the body of the Bill as now settled.

10. We think that the Bill should save local customs not only in the Panjáb but in all other territories to which it is to apply. We have accordingly excluded the section effecting this saving to the whole of British India; but we have omitted the proviso annexed to it in the Bill, as settled by the Select Committee in March, 1879, as the matter to which it relates is one falling outside the scope of the present Bill.

11. The Bill, No. II, together with the Preliminary Report of the Select Committee, has been published in English in Bombay, the North-Western Provinces, the Panjáb, the Central Provinces and British Burma, and in vernacular in Bombay, the Panjáb and the Central Provinces. We do not propose that any further step should be taken in respect to the Bill until it has been published in the Gazette and circulated to Local Governments with a view to obtaining opinions on it in its new form. It must also, by order of the Secretary of State, be re-translated into the Native languages and sent home to him for consideration. In fact, having regard to the complication and difficulty of the subject, we should prefer to have our present proposals treated as suggestions thrown out for discussion rather than as furnishing a final solution of the questions at issue.

*The 11th March, 1881.*

WHITLEY STOKES.  
RIVERS THOMPSON.  
J. PITT KENNEDY.  
G. C. PAUL.  
B. W. COLVIN.





(h) affect the right of the Government or a private owner—

to land formed on a site which is proved to belong to the Government or such owner, or

to the ancient bed of a river which is proved to have belonged to the Government or such owner immediately before its abandonment.

2. XI of 15, s. 2. Moo. I.A. 1: ntra Oudh ugdaars 3.

9. Nothing herein contained shall affect any definite and well-established local usage saved, local usage respecting the right to alluvial land, islands or abandoned river-beds; but (except in the cases provided for by the Panjáb Land-Revenue Act, 1871, section 16) the burden of proving such usage shall lie on the person alleging it.

3. islands formed in natural 1868.

10. All land and islands formed, and all river-beds abandoned, as mentioned respectively in sections four and five, and not vesting under any of the provisions hereinbefore contained, shall vest in the Government.

#### THE FIRST SCHEDULE.

##### (a). ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Subject.	Extent of repeal.
IV of 1872...	Panjáb Laws Act ...	So much as relates to Bengal Regulation XI of 1825.
XX of 1875...	Central Provinces Laws Act	Ditto.
XVIII of 1876	Oudh Laws Act ...	Ditto.

##### (b). BENGAL REGULATION.

Number and year.	Subject.	Extent of repeal.
XI of 1825...	Alluvion ...	The whole.

##### (c). BENGAL ACT.

Number and year.	Subject.	Extent of repeal.
IV of 1868...	Amending Act IX of 1847	Sections 2 and 4.

##### (d). RULES.

Date.	Subject.	Extent of repeal.
22nd May 1852.	Alluvion and Diluvion in Sindh.	Paragraphs 1, 2, 3, 4, 5 and 20.

#### THE SECOND SCHEDULE.

##### Rules for determining the frontage of a holding.

DRAW a right line connecting the extreme points of the riparian boundary of the holding, and take that as the frontage except—

(a) where such line or any portion of it lies altogether outside the riparian boundary of the holding, and any point on such line or portion, measuring along a perpendicular to it erected at such point, is further from such boundary than from the riparian boundary of any other holding; or

(b) where such line or any portion of it lies altogether within the riparian boundary of the holding, and there is any point on the portion of such boundary cut off by it so situated that right lines drawn from it to the extremities of such line or portion, as the case may be, contain an angle of less than  $160^{\circ}$ ,

in either of which cases the line or portion of the line, as the case may be, must be rejected, and other lines substituted for it as follows:—

2. When the line or any portion of it is rejected on the ground mentioned in paragraph (a), the lines to be substituted for it are to be determined as follows:—

Erect a perpendicular to it at its middle point: connect its extremities with the point where such perpendicular intersects the riparian boundary, and take those connecting lines as the frontage along that portion of the boundary, unless it should be found that there is a point on either of them which, measuring along the perpendicular to it erected at such point, is further from the riparian boundary of the holding than from the riparian boundary of any other holding, in which case that line must be rejected, a perpendicular to it erected at its middle point, and right lines drawn from its extremities to the point where that perpendicular intersects the riparian boundary of the holding, and so on, repeating the process, until such a series of right lines is obtained that no point on any one of them, measuring along the perpendicular erected to it at such point, will be further from the riparian boundary of the holding than from the riparian boundary of any other holding.

3. Where any line or portion of a line is rejected on the ground stated in paragraph (b), the lines to be substituted for it are to be determined as follows:—

Erect a perpendicular to it at its middle point: connect its extremities with the point where such perpendicular intersects the riparian boundary, and take those connecting lines as the frontage along that portion of the boundary, unless it should be found that right lines drawn from the extremities of either of them to any point on the portion of the boundary cut off by it contain an angle of less than  $160^{\circ}$ , in which case that connecting line must be rejected, a perpendicular erected at its middle point, its extremities connected with the point where such perpendicular intersects the boundary, and so on, repeating the process, until such a series of right lines is obtained that the right lines connecting the extremities of any one of them with any point on the portion of the boundary cut off by it will, in no case, be less than  $160^{\circ}$ .

D. FITZPATRICK,  
Secretary to the Govt. of India.





# The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 26, 1881.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART V.

Bills introduced into the Council of the Governor General for making  
Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

### LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 4th March, 1881, and was referred to a Select Committee :—

No. 8 OF 1881.

No. II.

### THE CODE OF CRIMINAL PROCEDURE, 1882.

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##### CHAPTER II.

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